memo written as part of a district attorney's duties in exercising prosecutorial discretion, the Court found that the speech at issue did owe its existence to the respondent's employment and was therefore unprotected. *Id.* at 421. The same result follows here.

Though Jones was originally hired only to teach her two courses, her speech also came during other activities sponsored and funded by WSU. Jones spoke while being paid extra to advise student groups, availing herself of WSU funding for school-encouraged research and conferences, insulting colleagues, and introducing herself as a WSU professor at a rally on campus. To hold that such speech did not owe its existence to her faculty position would be to limit her job to simply the courses in her job description, against the mandate in *Garcetti* to engage in a "practical" assessment of employee duties. *Garcetti*, 547 U.S. at 424.

While the dissent below is correct that *Garcetti* left open whether speech pursuant to teaching and scholarship might necessitate a different threshold inquiry, this Court should nonetheless find that *Garcetti* applies to Jones' speech. Arguing that academic freedom creates a higher level of speech protection, the dissent points to circuit cases that would protect nearly any speech by a professor. However, the true nature of academic freedom and the dangers of the dissent's logic militate against such a reading and for applying *Garcetti* to this case.

First, the dissent improperly vests the interest in academic freedom with individual professors rather than the universities that employ them. As the Fourth Circuit noted in *Urofsky v. Gilmore*, academic freedom—such as it exists in the First Amendment context—has historically allowed *institutions* to choose their own directions and orient their scholarship accordingly. *Urofsky v. Gilmore*, 216 F.3d 401, 412 (4th Cir. 2000) ("The Supreme Court . . . appears to have recognized only an institutional right of self-governance in academic affairs.").

Upholding that history, WSU has both the academic freedom to frame its mission and to terminate Jones for speech in conflict with that mission.

Second, the dissent is mistaken on the implications of affording Jones greater protection than other public employees. Parading out the horribles of granting a university discretion over its faculty, the dissent argues that such a rule would allow universities to "wield alarming power to compel ideological conformity." (quoting *Meriwether v. Hartop*, 992 F.3d 492, 506 (6th Cir. 2021)). However, in doing so, the dissent ignores the horrible paraded in that case itself, where a professor's speech was protected against university redress even as he callously refused to respect the identity of a transgender student. *Meriwether*, 992 F.3d at 511-12. Allowing professors to speak however they like, free of university oversight, opens the door to similar discriminatory speech in the name of a vague "academic freedom." Therefore, to best protect *true* academic freedom, this Court should vest it in universities themselves.

b. Jones' Speech Was an Extension of Her Grievance with the Medical School's Policy and Was Not on a Matter of Public Concern

Even if *Garcetti* does not apply to Jones' speech, she still fails to meet the threshold required for First Amendment protection because her speech was an outgrowth of her personal grievance with the university and not a matter of public concern. To determine whether speech was on a matter of public concern, courts look to "the content, form, and context of a given statement, as revealed by the whole record." *Connick*, 461 U.S. at 147-48. Applying that approach to the dispute in *Connick*, the Court found that an employee circulating questions about policy and morale in the wake of a grievance did not constitute a matter of public concern. *Id.* at 148. Instead, the Court saw such questions as "mere extensions" of the underlying dispute and refused to extend protection due to the dysfunction that would ensue "if every employment decision became a constitutional matter." *Id.* at 143, 148. The same result follows here.

Jones' speech in the classroom, at conferences, with colleagues, and at the rally centered constantly on affirmative action and was a mere extension of her disagreement with the university. Jones forced students to discuss WSU's policy, making men defend it and chastising women who failed to match her disdain. She also referred to students by chromosomal pairs, refused to stop doing so when asked, and clashed with a student over affirmative action. Bringing up affirmative action whenever possible, she referred to a male colleague as "an affirmative action baby" and accused her male students of "failing to buck the affirmative action stereotype" if she disliked their answers. When Jones did speak publicly on affirmative action at the rally, she introduced herself as "a victim of the corrupt system in society" in clear reference to feeling slighted by WSU's admission denial. Rather than furthering an open debate on affirmative action, these repeated indiscretions were mere extensions of Jones' dissatisfaction with her admissions results. Therefore, they did not touch a matter of public concern.

Finally, the dissent below's reliance on *Demers* is inapposite. *Demers* concerned a professor offering opinions on modifying the structure of his school's communications program, "at a time when the [school] itself was debating some of those very suggestions." *Demers v. Austin*, 746 F.3d 402, 417 (9th Cir. 2014). In contrast, Jones did not enter an ongoing debate on WSU's affirmative action policy, but rather pushed her own complaints about the policy at inappropriate times. She clashed in class, created a hostile environment, and insulted colleagues. When Jones did speak in a forum potentially open to a true affirmative action debate at the rally, she still introduced herself as a "victim of the corrupt system," underscoring that her words dealt with her perceived personal slight by WSU. Thus, unlike the proposal in *Demers*, Jones' speech in class, at conferences, and at the rally was merely an extension of her misgivings about the

policy and not legitimate debate on a matter of public concern. Her speech merits no First Amendment protection and WSU had the right as an employer to discipline her for it.

Conclusion

For the foregoing reasons, the Court should affirm the Fourteenth Circuit and find that WSU's actions violate neither the Equal Protection Clause of the Fourteenth Amendment nor the First Amendment.

Applicant Details

First Name	**Abrar**
Last Name	**Omeish**
Citizenship Status	**U. S. Citizen**
Email Address	**aeo36@georgetown.edu**
Address	**Address** Street **3133 Barkley Drive** City **Fairfax** State/Territory **Virginia** Zip **22031** Country **United States**
Contact Phone Number	**7035877104**

Applicant Education

BA/BS From	**Yale University**
Date of BA/BS	**May 2017**
JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**May 20, 2023**
Class Rank	**School does not rank**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**Yes**
Moot Court Name(s)	

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Specialized Work Experience **Appellate, Immigration, Pro Se**

Professional Organization

Organizations	**Just The Beginning Foundation**
	The Appellate Project

Recommenders

Treanor, William
wtreanor@law.georgetown.edu
Berger, Eric
Eric.Berger@law.georgetown.edu
9176796706
Gornstein, Irv
ilg@law.georgetown.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Dear Honorable Judge and Reviewing Clerks,

I am writing to express interest in working as your clerk in the next term. I imagine you receive many applications for this role. I am writing with a specific interest in working for your honor, as I am moved by the strength and significance of your opinions. I am currently a clerk for the Supreme Court Institute at Georgetown and want to bring everything I have to support you and your efforts towards justice.

I am a third-generation Northern Virginian and a second-generation product of its public schools. I have a deep loyalty to the DMV community and hope to serve the neighborhoods that shaped me. I have been serving our area in many ways—from supporting local scout troops, to building a free tutoring and mentorship organization for thousands of underprivileged youth, to holding elected office in the nation's toughest years to be a School Board member. I am now eager to spend the next few decades serving in our legal institutions. As I add value to your team, I hope this clerkship starts my journey to contribute and gain understanding of the law and justice system.

In addition to understanding this area and its demands as a native, I am familiar with local federal courts here as well. I have worked with a civil rights organization to bring a case of my very own through the EDVA court's "rocket docket" from start to finish, and I have spoken with several clerks from across the region. This has enabled me to appreciate the citizen experience of federal courts and the varied approaches to cases coming through them. It has also allowed me to understand the demands of clerks in diversely-paced settings. This Spring, I will be externing at the AUSA's office in EDVA. This will equip me with insights from yet another angle to bring unique value to your honor's work. What's more—I will most likely be clerking for a Northern Virginia Justice of the Virginia Supreme Court this upcoming year. I am certain these three experiences, in addition to my past work with judges in Virginia and DC, prepare me thoroughly to do a great job for you.

I have partaken in several senior level appellate courses to develop my reasoning and writing skills. In addition to those listed in my transcript, I am currently registered for the Appellate Immersion Clinic and several Supreme Court seminars that I plan to take next semester. Moreover, my public role over the past three years has required me to make hundreds of high-stakes legal decisions under sustained pressure and with little time, several of which reached the United States Supreme Court. I understand the stakes of the work you do and the importance of even the slightest mistake—from a lazy argument to a misplaced citation or typo. I take seriously the need for attention to detail, diligence, advance planning, and hard work. This approach did not start today—it comports with my track record as one among very few to successfully complete the intensive major track with a nearly-4.0 GPA in recent Yale University history, and a 4.0 unweighted GPA prior to that. This is also consistent with the reasons I am a Blume Public Interest Fellow at the Law Center, an honor given to only six students amidst 9,000 applicants.

As you can see from my writing sample, I have already written bench memos, draft opinions, and research reports for judges I have supported. I have also advised them on critical decisions involving novel legal questions, and prepared docket charts and timelines to support their day-to-day functions. For one judge, I even took it upon myself to prepare case summaries for his CLE seminar. I have had the privilege of refining my legal intuition through tutelage at varying levels, including Judge Cornelia Pillard of the US Court of Appeals for the DC Circuit, Judge Zia Faruqui of the US District Court of DC, Justice Donald Lemons of the Virginia Supreme Court, and Judge Daniel Ortiz of the Virginia Court of Appeals. These judges have taught me the importance of objectivity in legal thinking, and the power of intellectual expansion and flexibility to examine issues from all perspectives while respecting the long-standing tradition and its underlying values. I am eager to bring these skills and instincts to support you from the first day, and I am eager to proactively plan for goals that advance your honor's legal vision.

I am specific about judges for whom I seek to work, and I write out of my belief in your approach, and admiration for some of the decisions you have made. I have much more to offer than this page will allow, and I look forward to sharing more with you. I hope you will see the combination of my loyalty, passion, attention to detail, hard work, and overall devotion as a great fit.

Thank you for your consideration. I sincerely look forward to connecting with you.

Very Respectfully,

Abrar Omeish

Abrar Omeish

703-587-7104 (c) | http://www.linkedin.com/pub/abrar-omeish/47/611/2b5 | 3133 Barkley Drive
703-865-6797 (h) | aeo36@georgetown.edu | Fairfax, VA 22031

Education

Georgetown University, Washington, DC
- Juris Doctor and Master of Public Policy (dual JD/MPP), expected May 2023; student of Judge Cornelia Pillard, Irv Gornstein, Brian Wolfman.
- Blume Public Interest Fellow- full merit scholarship awarded to six students per class through a rigorous process from over 9,000 applicants

Yale University, New Haven, CT (August 2013 - May 2017)
- Double Bachelor's with Distinction: Political Science (Intensive Major Track- first in recent history to complete); Modern Middle East Studies
- Nakanishi Leadership Prize nominee; Yale MacMillan Center Research Assistant; Yale Center for Language Study Teaching Fellow
- Additional studies in Istanbul Zaim University, Ibn Haldun University, University of Jordan, Granada Summer School Oxford/Berkeley partnership

James W. Robinson Secondary School, Fairfax, VA (September 2009 - May 2013)
- International Baccalaureate Diploma, over 40 IB points, extended essay in politics; Advanced Diploma and top class rank, 4.0/4.0 unweighted GPA

Employment

Supreme Court Institute, Georgetown University, Washington, DC
Court Clerk, January 2023 – present
- Prepare bench memos, case presentations, pre-moot case conferences, oral argument notes, and post-mortem memos; assist moot court justices.

Fairfax County School Board, (www.abraromeish.com), Fairfax, Virginia
Member At-Large, January 2020 – present
- Manage a three billion dollar budget; represent 1.2 million constituents in nine districts who speak over 200 languages; oversee senior staff
- Equal access/opportunity champion; decisionmaker on complex and diverse legal issues, including two in the Supreme Court
- Successfully returned 180,000+ kids to school safely; navigated pandemic; board liaison to the County Planning Commission and the City of Fairfax
- Received over 161,000 votes countywide as the nation's first Libyan elected and Virginia's youngest and first Muslim woman in office

United States Department of Education, Office of the General Council (OGC), Washington, DC
Summer Legal Intern, May 2022 – August 2022
- Developed case briefs on new Supreme Court decisions and supported work for annual Department overview presentation event
- Provided internal audit and draft revisions of federal prayer guidance for schools and updated guidance per new Supreme Court decisions
- Prepared legal memo on possible arguments in future decision appeals to administrative law judge on university grant compliance
- Identified potential statutory interpretations and organized legal research to advance educational and vocational programming for Native Americans

Virginia Court of Appeals, Office of the Honorable Judge Daniel E. Ortiz, Fairfax, Virginia
Summer Legal Intern, May 2022 – August 2022
- Conducted legal research on various felony charges, accompanying assignments of error, and standards of review
- Prepared appellate bench memo for Judge on recommended decision with legal arguments and proposed interrogatories for both parties
- Verified and revised opinion citations; produced summaries of about ten Virginia Supreme Court case decisions for the Judge's state CLE seminar

Federal Legislation Clinic, Georgetown Law Center, Washington, DC
Student Attorney, January 2022 – May 2022
- Supported congressional advocacy group to meet client goals; developed expertise on portions of the National Defense Authorization Act
- Engaged in research and legislative drafting for federal right of action legislation (*Bivens* bill); contributed to its Congressional strategy
- Developed a policy memo consolidating 1,000+ pages of primary sources and research on Department of Defense reorganization proposals
- Authored a background memo on government use of Controlled Unclassified Information (CUI) for staff and congressional use
- Prepared staff for briefings and filled in when necessary; published one-pager documents to support advocacy goals (example)

United States Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Washington, DC
Fall Trainee, September 2021 – January 2022
- Drafted federal model guidance on mental health with White House Domestic Policy Council for publishing to states and localities; developed feedback tracker for collaboration among various agencies
- Prepared alternative design proposal for Department designations of Technical Assistance Centers (TACs)

United States District Court for the District of Columbia, Office of the Honorable Judge Zia Faruqui, Washington, DC
Summer Intern, May 2021 – August 2021
- Prepared daily case bench memos to advise judge on scheduled cases; assembled docket charts on JENIE; took notes on judge decisions and drafted judicial orders based on hearing outcomes
- Conducted legal research on novel seizure question and produced detailed memo for judge on recommended action
- Drafted judicial opinion on complex Fourth Amendment federal law decision

Laborers' International Union of North America (LiUNA), Mid-Atlantic Region Office, Reston, VA
Peggy Browning Fellow, July 2021 – August 2021
- Prepared legal memo on the *laches* defense; prepared legal memo on present law relating to forced arbitration and changes per recent decisions
- Conducted legal research; documented client grievances; prepared client documents and took thorough site visit notes
- Analyzed National Labor Relations Board data for ongoing litigation project; prepared FOIA request to NLRB

The HMA Law Firm, McLean, Virginia
Legal Fellow, January 2019 – May 2019
- Instituted a two-pronged case approach: initiated and supervised case completion; developed advocacy plans to expedite and finalize cases
- Engaged clients in multiple languages and formulated leading questions to support their needs; identified necessary filing avenues for their cases

Democratic National Committee, Washington, DC
Senior Organizer, Political and Organizing Department, May 2017 – December 2017
Recruited by Deputy Chairman Keith Ellison as a policy advisor on the progressive values team after the agenda compromises in the party
- Built national millennial outreach program and systemized structure for long-term, future activation; effectively utilized VAN
- Utilized structure to secure record-breaking Virginia victories in all statewide races for the VA Coordinated Campaign
- Mobilized over 100 youth teams to organize hundreds of events and contact tens of thousands of voters; coordinated training/development for teams
- Recruited shifts in multiples of the team total (1,000+ vs. ~300) and in tenfold of the team goal; participated in persuasion and training activities

Office of the Attorney General for the District of Columbia, Washington, DC
Equity Intern, Public Interest/Civil Litigation Division, May 2016 – August 2016
Recruited personally by Deputy Attorney General Natalie Ludaway
- Co-led legal team on class action involving over 1,000 files under an unexpected turn-around of less than two months
- Researched appropriate information for case formation and suggested argumentative strategies; edited legal motions, briefs, and responses
- Instituted various long-term cataloging methods for legal cases of 30+ years; organized case exhibit and files on Relativity; conducted legal research

Yale University Office of Career Strategy, Washington, DC
Director, Yale in DC Program, May 2015 – May 2016
- "Greatest program and highest value-added since its inception." - led the program through its tenth anniversary and organized dignitary gala
- Organized over 70 events in the span of about 40 days that involved over 1,500 students and alumni; report of accomplishments available here
- Envisioned, built, and sustained summer mentorship program (100+ pairs)
- Recruited over 200 new alumni in top ranking DC positions (e.g. Bob Woodward, Thomas Pickering, Howard Dean, Brookings President)
- Developed training resources and compiled material packets for successors; instituted systems of news, follow up, confirmation, and gratitude
- Mediated between university officials and DC influencers to strengthen the program for future years; cultivated over 100 new relationships

Booz Allen Hamilton: Cybersecurity- Enterprise Information Security Team, Washington, DC; Herndon/McLean, VA
Information Assurance Policy and Compliance Analyst, June 2014 – August 2014
- Published Cybersecurity Awareness and Personally Identifiable Information/Protected Health Information guidance; drafted Information Categorization policy and procedure; developed and edited Information Security/Protection Training course for all staff
- Generated cybersecurity awareness material inventory, updated databases, recreated and managed internal webpages; screened content for equity

US Department of State Bureau of Information Resource Management, Washington, DC
Virtual Student Foreign Service Officer (assigned to Libya), August 2012 – January 2014
- Crafted the inaugural State Department program in the new Libya: provided consulting services on Constitutional Development, formulated curricula on democracy, identified key leaders on the ground, presented lessons via teleconference (English, Arabic)

United States Congress Office of Congressman James P. Moran, Washington, DC
Special Aide to Legislative Director and Legislative Assistants, May 2013 – August 2013
- Drafted bill on Peace Corps health services, wrote policy briefs for Congressman, met with dignitaries on his behalf
- Utilized internal logging technologies, led Capitol tours, represented office at events, responded to constituent mail/calls

Additional Leadership Experience

Bernie Sanders for President 2020
Virginia Co-Chair, Superdelegate, DNC Rules Committee Appointee, February 2020 – June 2020
- Elected as a PLEO: Public Leader/Elected Official (Superdelegate) to the Democratic National Convention 2020; represented at high profile events
- Appointed to DNC Rules Committee, among four in Virginia with Jeff Weaver (fmr manager): advised; drafted resolutions and mobilized coalitions

Coalition, No Muslim Ban Ever Campaign (https://www.nomuslimbanever.com)
Spokesperson, January 2017 – January 2020
- Strategized with national coalition partners on response to Trump's Muslim ban; developed messaging and participated in Hill briefings, press conferences, and other media-heavy events to successfully make reversing this ban Biden's first action in office.

Transition Team, Governor-Elect Ralph Northam, Commonwealth of Virginia
Volunteer Team Member, November 2017 – January 2018
- Aided management of policy working groups on local government, education, workforce, trade/commerce, technology, opioids, veterans, etc.
- Advised in change management and identified community leaders of long-standing relationships for potential leadership within the administration

GIVE (Growth and Inspiration through Volunteering and Education), LLC, Fairfax County, VA
Co-founder, President, June 2009 – present (www.giveyouth.org)
- Built completely youth-run, youth-led organization of 12,000+ associates, 10,000+ beneficiaries, over 15,000 dollars in net assets, 20 locations
- Recruited members, liaised with government, school system, and community, managed centers, hired executive team, developed program curriculum, trained volunteers and executives, published children's book
- Legal and financial consultant: obtained 501c3 status for the organization, managed portfolios and charity account systems, organized robust fundraising campaigns, wrote founding documents, renew membership and status every year

Other Public Service Experience: At-Large Consumer Protection Commissioner (2017-20), Walden Peer Counselor (2016-2017), Fairfax County Student Human Rights Commission (Chair, 2011-2013), Girl Scout Mentor (2013-present), GSCNC- Board Member, GSCNC- National Delegate (2011-13), Libyan Constitution Project (2011), Interfaith Youth Action Group, Tony Blair Faith Foundation (2009-11)

Awards: Phi Beta Kappa of DC Award, Yale Nakanishi Prize for Exemplary Leadership nominee (2017), Northern Virginian of the Year, Women Who Mean Business (WBJ), Women to Watch (Running Start), Byrd Leadership (Byrd Family and VA Supreme Court), Virginia Peace Award (Area faith leaders), Principal's Leadership (Herff Jones), President's Gold Award (US President's Council on Service), President's Award (Girl Scouts)- chosen among tens of thousands, Gold Award (Girl Scouts), Model Citizen (Girls State, Longwood University), Telly Award

Languages: English (native), Arabic (fluent—written and spoken), Spanish (professional written, proficient spoken)

Record of: Abrar Esam Omeish
GUID: 808572513

Course Level: Juris Doctor

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law/Public Interest
Major: Law/Public Policy

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2020							
LAWJ	001	31	Legal Process and Society Nan Hunter	4.00	B+	13.32	
LAWJ	002	32	Bargain, Exchange & Liability Gary Peller	6.00	B	18.00	
LAWJ	005	31	Legal Practice: Writing and Analysis Michael Cedrone	2.00	IP	0.00	
LAWJ	009	31	Legal Justice Seminar Kevin Tobia	3.00	B+	9.99	

	EHrs	QHrs	QPts	GPA
Current	13.00	13.00	41.31	3.18
Cumulative	13.00	13.00	41.31	3.18

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2021							
LAWJ	003	93	Democracy and Coercion Allegra McLeod	5.00	B+	16.65	
LAWJ	005	31	Legal Practice: Writing and Analysis Michael Cedrone	4.00	B+	13.32	
LAWJ	007	31	Property in Time Sherally Munshi	4.00	B	12.00	
LAWJ	008	31	Government Processes Howard Shelanski	4.00	B	12.00	

	EHrs	QHrs	QPts	GPA
Current	17.00	17.00	53.97	3.17
Annual	30.00	30.00	95.28	3.18
Cumulative	30.00	30.00	95.28	3.18

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	1631	05	Federal Practice Seminar: Contemporary Issues Irving Gornstein	2.00	B+	6.66	
LAWJ	408	06	Poverty Law and Policy Practicum Peter Edelman		NG		
LAWJ	408	81	~Seminar Peter Edelman	2.00	IP	0.00	
LAWJ	408	85	~Fieldwork Peter Edelman	6.00	IP	0.00	

	EHrs	QHrs	QPts	GPA
Current	2.00	2.00	6.66	3.33
Cumulative	32.00	32.00	101.94	3.19

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Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	1482	09	Negotiations and Mediation Seminar Eric Berger	3.00	A	12.00	
LAWJ	408	06	Poverty Law and Policy Practicum Peter Edelman		NG		
LAWJ	408	81	Poverty Law and Policy Practicum Peter Edelman	4.00	A	16.00	
LAWJ	408	85	~Fieldwork Peter Edelman	6.00	P	0.00	
LAWJ	530	05	Federal Legislation Clinic David Rapallo		NG		
LAWJ	530	81	~Legislative Lawyering and Client Representation David Rapallo	4.00	B+	13.32	
LAWJ	530	82	~Educational Development David Rapallo	4.00	A-	14.68	
LAWJ	530	83	~Professional Development David Rapallo	2.00	A-	7.34	

	EHrs	QHrs	QPts	GPA
Current	23.00	17.00	63.34	3.73
Annual	25.00	19.00	70.00	3.68
Cumulative	55.00	49.00	165.28	3.37

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Summer 2022							
LAWJ	361	06	Professional Responsibility Stuart Teicher	2.00	A-	7.34	

	EHrs	QHrs	QPts	GPA
Current	2.00	2.00	7.34	3.67
Cumulative	57.00	51.00	172.62	3.38

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	165	02	Evidence Michael Pardo	4.00	A-	14.68	
LAWJ	178	07	Federal Courts and the Federal System Michael Raab	3.00	B+	9.99	
LAWJ	215	08	Constitutional Law II: Individual Rights and Liberties Gary Peller	4.00	B	12.00	
In Progress:							
LAWJ	397	05	Separation of Powers Seminar	3.00	In Progress		

	EHrs	QHrs	QPts	GPA
Current	11.00	11.00	36.67	3.33
Cumulative	68.00	62.00	209.29	3.38

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
In Progress:							
LAWJ	049	09	Appellate Courts and Advocacy Workshop	3.00	In Progress		
LAWJ	1174	05	Supreme Court Institute Judicial Clerkship Practicum	3.00	In Progress		
LAWJ	1622	05	Wrongful Convictions	2.00	In Progress		
LAWJ	351	08	Trial Practice	2.00	In Progress		

----------Continued on Next Page----------

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Abrar Esam Omeish
GUID: 808572513

---------- **Transcript Totals** ----------

	EHrs	QHrs	QPts	GPA
Current				
Annual	13.00	13.00	44.01	3.39
Cumulative	68.00	62.00	209.29	3.38

---------- **End of Juris Doctor Record** ----------

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

March 28, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing with the greatest enthusiasm to recommend Abrar Omeish, a current Georgetown Law student, for a clerkship in your chambers.

Abrar is not a typical candidate. Her grades, although on an upward trend, are below what I am sure you are looking for. But I am writing because I have been very impressed with her. She is smart, hard-working, thoughtful, and committed to public service, she has a stunning record of achievement, and she has excellent judgment. She is well worth careful consideration and would be a great addition to any chambers.

Abrar is a Yale College graduate whose undergraduate record and public service commitment led to her receiving one of our Blume public interest fellowships. This is a newly created program at Georgetown Law that provides full tuition scholarships for a handful of people we think will make great contributions to the public good as lawyers. It is our analogue to NYU's Root Tilden. The selection process is intensely competitive involving interviews and review of the candidate's record. Abrar was one of only six recipients her year.

Her record of achievement is substantial and long-standing. She is the co-founder of a program that, over the past decade, has given free tutoring and mentoring to thousands of underprivileged children. While in Law School, she has served as an elected member of the Fairfax County Board of Education, helping supervise a multibillion dollar budget and navigate the school system through the pandemic. She received over 160,000 votes and is a trailblazer in her role - the first Libyan elected official in the country, the youngest person ever to hold her position. She also served as Virginia Co-Chair for Bernie Sanders. I really don't know how she does it all.

She clearly is someone who gets things done, a key for success as a clerk, and she has a record of working well with others, another crucial element of clerking.

I leave to others commenting on her academic record at Georgetown, since she has not been a student of mine. What I would like to highlight is her thoughtfulness, understanding of different perspectives, and judgment.

I met her when she first came to Georgetown. Even among the Blume Scholars, a remarkable group, she stood out. Not only does she have a great record of public service, she is thoughtful, outgoing, and articulate.

We have had numerous discussions over the past few years, both about her career goals and the school. She has been particularly helpful to me in discussing how to make the law center a welcoming place for Muslim law students. She has reached out to me about this topic, and, at a time in which in our community and so many others, people have difficulty having open conversations with those of different perspectives, Abrar is a model for her openness to other viewpoints and ability to problem solve. Again, I think this would be invaluable in a clerk, enabling her to work through hard issues and grapple with different perspectives.

I have been most impressed with Abrar. I am confident that she would be an excellent clerk, and I hope you will give her application the most serious consideration.

Sincerely,

William M. Treanor
Dean & Executive Vice President
Paul Regis Dean Leadership Chair
wtreanor@georgetown.edu | 202.662.9030

GEORGETOWN UNIVERSITY

March 16, 2023

To Whom It May Concern:

I am delighted to recommend Abrar Omeish for a clerkship in your chambers.

Abrar was a student in my Negotiations and Mediation Seminar at Georgetown Law during the Spring 2022 semester. Over the course of six intensive days of study and practice, Abrar distinguished herself as an extraordinarily bright, insightful, curious and well-rounded individual, who brings not only superior intellectual horsepower to her analyses but also the ability to process and apply her learnings in practice. In a seminar of 24 students, Abrar was the standout. She set herself apart through both the leading role she played in classroom discussions and the quality of her written submissions.

Abrar's aptitude for navigating between theory and practice was especially evident in her written work. As part of the course, students are required to write journals where they reflect on what they are learning through readings and classroom discussions and apply it to their own negotiation and conflict resolutions challenges. Abrar's journals were the best in the class, owing in large part to her ability to connect the theories covered in the literature to her professional pursuits. This is the sort of skill that leads me to believe that Abrar would be especially well-suited to a clerkship, where she will have the opportunity to take lessons from her legal education and apply them to her professional practice, often in her written work.

Her ability to thread the needle between theory and practice was exemplified in her final paper, which brilliantly connected the academic research on negotiation to her personal experiences in navigating fraught scenarios in the legal and political spheres. It was one of the most gripping and compelling papers I have graded in my 16 years teaching this course.

In summary, based on Abrar's performance in my course, I can enthusiastically recommend her for a clerkship in your chambers. I am not only confident that she would be a diligent and thoughtful clerk; I also believe that she would take lessons from the experience that would be highly valuable to her continued growth as a legal professional and an active contributor to public discourse about the most important issues facing our nation today.

Yours sincerely,

Eric Berger
Adjunct Professor of Law
Georgetown University Law Center
Tel: (917) 679-6706
Email: emb65@law.georgetown.edu

Georgetown Law
Supreme Court Institute
600 New Jersey Avenue, NW
Washington, DC 20001

March 28, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a Professor at Georgetown Law and the Executive Director of the Supreme Court Institute. Abrar Omiesh was a student in my Federal Practice Seminar that I co-teach with Judge Pillard of the D.C. Circuit. Based on my experience with Abrar, I recommend her for a clerkship.

Abrar came to our class with far less background in both the subject matter and the method for analyzing legal problems than her fellow classmates. Her early participation reflected those deficits. But as time went on, she understood more what we were looking for, and she blossomed into one of our favorite participants.

Abrar's has four attributes that stand out and, in combination, made her contributions to the class unique. First, everything she says comes from a commitment to and a passion for social justice. Second, Abrar's comments are framed in terms of the large issues raised by a case. Third, Abrar is unpredictable in terms of how she will come down on an issue. She does not hew to the conventional-she thinks independently about all issues. Fourth, she is fearless and willing to take chances on what she has to say.

All of that was also in evidence in the paper she submitted on *Bivens*. The *Bivens* decision authorized suits against federal officials for violations of constitutional rights. The history of Bivens is that it is now a disfavored doctrine. In each succeeding case since the first three, the Court has cut back further and further on its scope. Rather than attempt to carve out and justify some space for *Bivens* that fits in with existing doctrine, Abrar's paper was a frontal assault on the Court's failure to live up to the early promise of *Bivens*.

From our perspective, it would have been more practical and more persuasive to try to carve out a continuing space for *Bivens*, and perhaps suggest some kind of legislative response. The approach Abrar took was, from our perspective, too ambitious for someone who is a second-year law student. But that did not stop Abrar. She is just that committed to her ideals.

Sincerely,

Irv Gornstein
Executive Director

Irv Gornstein - ilg@law.georgetown.edu

Abrar Omeish

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Please find my writing sample below.

This is a memo I prepared for Judge Ortiz of the Virginia Court of Appeals in advance of his panel hearing in a recent case. It summarizes the case, relevant law, presents a decision recommendation, and provides questions the judge may consider asking during the panel. The case has already been heard.

COURT OF APPEALS OF VIRGINIA
BENCH MEMORANDUM

To:	Judge Ortiz
Prepared by:	Abrar Omeish
Panel Date and Location:	July 26, 2022, Virginia Beach
Judge Assigned:	Judge Ortiz
Case Style:	*Commonwealth of VA vs. Murrell, Jarvis Cornelius*
Record No.:	1181-21-1
Appealed From:	Chesapeake Circuit
Judge:	Hon. Rufus A. Banks, Jr.
Counsel for Appellant:	Heather Buyrn Crook, Esq. (Buyrn & Crook, Attorneys)
Counsel for Appellee:	Jason S. Miyares (Attorney General) Tanner M. Russo (Assistant Attorney General)

Jarvis Cornelius Murrell ("Murrell") appeals four convictions by the Circuit Court of the City of Chesapeake ("circuit court"). He argues that the circuit court erred in convicting him because it failed to prove necessary elements in all four charges beyond a reasonable doubt. The charges and claims are as follows:

I. DUI With Prior Related Felony DUI under Virginia Codes 18.2-266 and 18.2-270(c)(2), for which they claim Commonwealth fails to prove DUI.

II. Refuse Breath Subsequent Within 10 Years under Virginia Code 18.2-268.3, for which they claim Commonwealth fails to prove unreasonable refusal.

III. PWID under Virginia Code 18.2-248, for which they claim Commonwealth fails to prove possession, knowledge, and intent to distribute cocaine.

IV. Drive While DUI Revoked under Virginia Code 46.2-391(d)(2), for which they claim Commonwealth fails to prove DUI.

Because Murrell argues Commonwealth failed to prove the elements of his convictions, he asks this Court to reverse the circuit court's decisions. However, because

Murrell did not provide evidence to overcome the standard of review required on appeal, I recommend this court **AFFIRM**.

I. BACKGROUND

On September 20, 2022 at 4:45am, McDonald's employee Joseph Keenan ("Keenan") arrived at work and noticed a car "in the middle of the parking lot" (R. 174). After several customers brought this to his attention, Keenan walked outside around 6:20am and noticed that the man, Jarvis Cornelius Murrell ("Murrell"), was not awake (R. 173). Keenan "had to bang on the roof of the car" to wake the man up and asked him to pull into the lot, upon which the man did (R. 175). Keenan did not smell nor see any alcohol in his vehicle (R. 174). After about ten minutes, Keenan noticed the man's car "on top of the curb… hitting the sign and everything else" and called the police (R. 176).

Chesapeake Police Officer Shannon Velez ("Velez") arrived in the parking lot at 6:42am and noticed a car with a side front tire on the curb and open side door, still on drive (R. 178-90, 194). Velez woke Murrell up and asked him to step out, upon which he slurred speech and she noticed a strong odor of alcohol and "bloodshot" eyes (R. 180). She asked about Murrell's consumption, and he stated that he did not have any alcohol since one shot at 1:00am (R.181). He explained that the car was a rental and that he had been driving back from Portsmouth, where his girlfriend was delivering their baby. (R. 182).

Outside of the car, Murrell appeared to "be swaying" (R. 181). Velez did not notice any contraband or evidence of alcohol ingestion at the scene (R. 193), but she conducted the one-legged-stand, the walk-and-turn, and the HGN field sobriety tests ("FSTs"). During the HGN test, she claims to have noticed involuntary eye bounces consistent with intoxication. (R. 182-

84). According to Velez, Murrell "stated that he was done with the FSTs at that point" and that he rejected a breath test he was offered (R. 184).

Murrell claims that he explained how his health complications prohibit him from effectively engaging in the FSTs (R. 256), stating after he stumbled that "I'm having a hard time myself" (R. 183). The officer was aware of this (R. 181). Murrell had shared with her that he had a concussion four months prior, as well as asthma and bronchitis which he took albuterol for at 7:00am that morning (R. 181-82). Officers did not conduct an ABC test, nor a counting backwards test as alternatives (R. 257).

Velez arrested Murrell for DUI suspicion (R. 184). Velez later claimed during trial that she had also looked up Murrell in their system and found a previous license revocation for a third offense DUI conviction on June 12, 2019, as well as a refusal charge on February 4, 2019 (R. 186). During her search, Velez found no drugs, alcohol, or paraphernalia (R. 256), though she did find $366 in various folded denominations in Murrell's pocket (R. 190). Copies of the prior convictions were entered as evidence without objection during trial (R. 186).

Officers Fellows ("Fellows") and Posada ("Posada") arrived to the scene as back up during the time when Velez was conducting field tests (R. 189, 208). Upon his arrival, Fellows looked inside the open vehicle and "observed a small plastic baggie containing a powdery substance, suspected narcotics," near the driver seat door (R. 209). He motioned to Posada to join him (R. 209), and both searched the car.

Fellows and Posada did not find anything in the trunk, nor did they find alcohol or any paraphernalia in the car (R. 212-16). Officers did find several additional plastic baggies in the center console near the armrest, 20 of which were empty and three of which had a white powdery substance in them (R.237-38). They also found two credit cards with Murrell's name

on them and two digital scales—one in the console and another on the passenger seat with white residue on it (R. 225-27, 348-50, 236, 238).

When identifying the baggies to Murrell, Murrell indicated that the officers "must have planted them" in the car (R. 193-94). The driver-side bag Fellows originally identified turned out to be cellophane wrap of "four tied up packaged corner baggies" of a white substance (R. 226-27, 351). The white substance of the baggies in the console and on the driver-side were later tested and found to contain cocaine (R. 351).

Velez transported Murrell to the jail, where Murrell refused to take a breath test twice and signed an acknowledgement of refusal form after it was read to him (R. 187). He was then charged with Refuse Breath Subsequent Within 10 Years, in addition to the DUI With Prior Related Felony DUI, Drive While DUI Revoked, and PWID.

During trial, Detective Terra Cooley ("Cooley") of the Chesapeake Police Department offered expert testimony on the packaging and distribution of narcotics (R. 241). She testified from her experience that the amount found in the vehicle is consistent with amounts that are "more than likely" being sold (R. 245). While personal use involves consuming half a gram per day on average, reaching about a gram-and-a-half for heavy users according to her testimony, Murrell was found with 11 grams (R. 243-44). According to her, cocaine users generally buy their dose every day, purchasing about three-and-a-half grams "at most" for use "over a couple days" (R. 244).

Cooley also noted that the cash obtained from Murrell in "lots of denominations" is consistent with the behavior of drug distributors, especially in the most common twenty-dollar bill denominations found with Murrell (R. 190, 246). She expressed that these patterns, as well as the use of a rental car, are "very significant" (R. 246).

II. ASSIGNMENTS OF ERROR

Murrell makes four assignments of error, each for failure to prove the elements of his four charges, as outlined:

1. The trial court erred in convicting the Appellant for DUI With Prior Related Felony DUI under Virginia Codes 18.2-266 and 18.2-270(c)(2) because the Commonwealth failed to prove the elements of DUI. Specifically, it failed to prove that the Appellant, beyond a reasonable doubt, was driving under the influence of an intoxicant which impaired his ability to drive.
2. The trial court erred in convicting the Appellant for Refuse Breath Subsequent Within 10 Years under Virginia Code 18.2-268.3 because the Commonwealth failed to prove the elements. Specifically, it failed to prove that the Appellant unreasonably refused, beyond a reasonable doubt.
3. The trial court erred in convicting the Appellant for PWID under Virginia Code 18.2-248 because the Commonwealth failed to prove the elements. Specifically, it failed to prove possession, knowledge, and intent to distribute cocaine, beyond a reasonable doubt.
4. The trial court erred in convicting the Appellant for Drive While DUI Revoked under Virginia Code 46.2-391(d)(2) because the Commonwealth failed to prove the elements. Specifically, it failed to prove the elements of DUI, beyond a reasonable doubt.

III. ANALYSIS

1. Standard of Review

The four claims presented in this case challenge the sufficiency of the evidence. When reviewing such claims, the appellate court must "consider the evidence and all reasonable

inferences fairly deducible therefrom in the light most favorable to the Commonwealth," *Perry v. Commonwealth,* 280 Va. 572, 578 (2010) (quoting *Bass v. Commonwealth,* 259 Va. 470, 475 (2000)), the prevailing party in this case. While the appellate court is "obligated to set aside the trial court's judgment when it is contrary to the law and the evidence," *Tarpley v. Commonwealth*, 261 Va. 251, 256 (2001), the court must determine whether this evidence is such that "any 'rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Young v. Commonwealth*, 275 Va. 587, 591 (2008).

The reasonableness of a defendant's hypothesis is a question of fact. *Wood v. Commonwealth*, 57 Va. App. 286, 306 (2010). Evidence is not limited to that mentioned by parties on the record, *Bolden v. Commonwealth*, 275 Va. 144, 147 (2008), and we give "the benefit of all inferences fairly deducible from the evidence." *Id* at 148. Unless the judgment is "plainly wrong or without evidence to support it," the appellate court affirms. *Bolden*, 275 Va. at 148.

2. The Circuit Court Did Not Err in Convicting Murrell of DUI With Prior Related Felony DUI (I) and Drive While DUI Revoked (IV) When There Was Sufficient Evidence to Meet the DUI Element.

Murrell argues that the DUI With Prior Related Felony DUI and Drive While DUI Revoked charges are in error because the DUI element of each charge has not been proven "beyond a reasonable doubt." He argues that no admission established the recent imbibing of alcohol, and that only around 1:00am did he consume "one shot" (Appellant Br. 10). He states that "there was only circumstantial evidence" that he was inebriated while driving (Appellant Br. 10-11).

However, Murrell fails to recognize that the Commonwealth "is not required to disprove every remote possibility of innocence," *Cantrell v. Commonwealth*, 7 Va. App. 269,

289 (1998). Instead, the Commonwealth is "required only to establish guilt of the accused to the exclusion of a reasonable doubt." *Id*.

Driving under the influence is outlined in the referenced Virginia Code as operating a motor vehicle while under the influence of alcohol or any drug/intoxicant "of whatsoever nature" such that the ability to drive or operate any motor vehicle is impaired. Code § 18.2-266. This could be due to the combination of alcohol and a drug as well. *Id*. This standard does not require blood alcohol levels and can be proven through exhibited symptoms like "manner, disposition, speech, muscular movement, general appearance or behavior" *Thurston v. Lynchburg*, 15 Va. App. 475, 483 (1992).

Commonwealth presented eyewitness testimony through Keenan that Murrell was nonresponsive to such a degree that Keenan "had to bang on the roof of the car" to wake Murrell up when his car was parked in the middle of the parking lot (R. 173). This fact alone is sufficient to infer that the driver is intoxicated. *Propst v. Commonwealth*, 24 Va. App. 791, 795 (1997). This was the case even after a second attempt to correct him, at which point Keenan testified that Murrell's car was "on top of the curb… hitting the sign and everything else" (R. 176). Importantly, Keenan also testified that Murrell did move his car while he was "knocked out" (R. 168), having "[gone] forward through the intersection… he turned and pulled into the parking lot" after reversing for a bit first (R. 175). Murrell was unable to operate his vehicle when he was found, and he was still unable to after twice being corrected.

This testimony is consistent with the that of Velez, who observed that the car "was still in drive" when arriving at the scene (R. 179). Velez indicated that at this time Murrell had bloodshot eyes, slurred speech, and a "strong odor of alcoholic beverage" (R. 180). Commonwealth also demonstrated through the HGN test that Murrell exhibited involuntary eye

bounces typical of intoxication (R. 182-84) at the time of his stop. When Posada asked him if he had been drinking, he replied "not for real" (R. 234).

Additionally, whether or not Murrell was driving under the influence is a factual matter. The appellate court is required to rule according "the benefit of all inferences fairly deducible from the evidence," *Bolden*, 275 Va. at 148, "in the light most favorable to the Commonwealth." *Perry,* 280 Va. at 578.

When viewed in the light most favorable to Commonwealth, the record supports the circuit court's finding "beyond a reasonable doubt" that Murrell was driving under an influence in the moments leading up to police arrival, if not before. Meeting the DUI element in this way means the circuit court did not err in either conviction. The evidence Commonwealth presented indicates that the circuit court judgment is not "without evidence to support it," and the appellate court is compelled to affirm the prior court's decision in such cases. *Bolden*, 275 Va. at 148.

3. The Circuit Court Did Not Err in Convicting Murrell of Refuse Breath Subsequent Within 10 Years (II) when There Was Sufficient Evidence to Meet the Unreasonable Refusal Element.

Murrell here argues that the Refuse Breath Subsequent Within 10 Years charge is in error because the Unreasonable Refusal element of each charge has not been proven "beyond a reasonable doubt." He contends that he told officers about his physical and medical issues that interfered with his ability to perform the physical tests (Appellant Br. 8), citing a recent concussion, asthma, and medication he took that morning for bronchitis that resulted in balance issues prohibitive to the balance required to successfully pass the field sobriety tests (R. 267).

The law requires any driver who operates a motor vehicle to consent to blood or breath samples to determine intoxication status when arrested for a DUI violation, as Murrell was in

this case. Va. Code § 18.2-268.2(A). "The circumstances in which one may reasonably refuse the test and abrogate the consent implied by law are narrow," *Brothers v. Commonwealth*, 50 Va. App. 468, 475 (2007), and "there must be some reasonable factual basis for the refusal," like health endangerment. *Cash v. Commonwealth*, 251 Va. 46, 50 (1996).

Murrell refused breath testing at the scene and twice again at the station after Velez read an acknowledgement of refusal form to him that he signed (R. 187). He informed the police that he was unable to balance for the sobriety tests because of a recent concussion and medication related to his bronchitis (R. 181-82). When Velez asked whether he was diagnosed with or taking any medications for the concussion he claimed, Murrell said he was not (R. 181). Additionally, throughout trial, Murrell presented no evidence to substantiate claims about his conditions (R. 262), omitting the required "factual basis for the refusal." *Cash*, 251 Va. at 50. More importantly, Murrell does not cite health as a prohibitive reason in the analysis of his brief for this appeal (Appellant Br. 9).

Finally, whether or not behavior is reasonable is a question of fact. *Archer v. Commonwealth*, 26 Va. App. 1, 12-13 (1997). While reasonableness of concerns around health and the ability to balance can be discussed, the appellate court here can only set aside the trial court's judgement when it is "contrary to the law and the evidence." *Tarpley*, 261 Va. at 256. The appellate court is required to rule according "the benefit of all inferences fairly deducible from the evidence," *Bolden*, 275 Va. at 148, "in the light most favorable to the Commonwealth." *Perry,* 280 Va. at 578. Here, the absence of "contrary evidence" to indicate a factually-based health condition for Murrell gives the appellate court no grounds upon which to reverse the factual finding of unreasonable refusal.

4. The Circuit Court Did Not Err in Convicting Murrell of PWID (III) when There Was Sufficient Evidence to Meet the Possession, Knowledge, and Intent to Distribute Cocaine Element.

Murrell argues that the PWID charge is in error because the Possession, Knowledge, and Intent to Distribute Cocaine element has not been proven "beyond a reasonable doubt." He argues that "he made no admissions regarding the Cocaine" (Appellant Br. 11), and that the Commonwealth could not establish that the cocaine was in fact his own, nor that he had an intent to distribute, with anything but circumstantial evidence.

Possession of a controlled substance with intent to distribute means the person "'intentionally and consciously possessed' the drug, either actually or constructively, with knowledge of its nature and character, together with the intent to distribute it." *Jones v. Commonwealth*, 23 Va. App. 93, 100-01 (1996). Proof of possession can be constructive, which means "evidence of acts, statements, or conduct… or other facts or circumstances which tend to show the defendant was aware of both the presence and character of the substance and that it was subject to his dominion and control" *Drew v. Commonwealth*, 230 Va. 471, 473 (1986).

Murrell was "knocked out" (R. 168) and unable to move his car properly after several nudges before police found him in the parking lot with his car on drive and "on top of the curb… hitting the sign and everything else" (R. 176-90). Velez noticed eye movements in him consistent with being under the influence (R. 182-84), and she found a previous license revocation for a third offense DUI conviction as well as a refusal charge just the past year (R. 186). Additionally, Fellows found a cocaine baggie in the driver-side seat of the vehicle Murrell was driving (R. 226-27) such that it was visible to him from outside of the car (R. 209). While it is true that presence of a substance does not immediately nor necessarily imply

possession, *Burchette v. Commonwealth*, 15 Va. App. 432, 435, (1992), it is reasonable to infer from this evidence that, Murrell, having rented and been driving the vehicle, would have noticed it given the offer was able to from a distance. Officers also found credit cards with Murrell's name on them in the vehicle console with the rest of the cocaine baggies, as well as a scale with white residue from the baggies on it on the passenger-side seat of a vehicle only Murrell had been found in for hours. It is reasonable to infer that Murrell would have been aware that two credit cards, in his name, were placed in a closed compartment with these baggies.

Additionally, intent to distribute "must be shown by circumstantial evidence" that corresponds to the conviction. *Wilkins v. Commonwealth*, 18 Va. App. 293, 298-99 (1994). "Circumstantial evidence is as competent and is entitled to as much weight as direct evidence, provided it is sufficiently convincing to exclude every reasonable hypothesis" *Breeden v. Commonwealth*, 43 Va. App. 169, 177 (2004). The Commonwealth "is not required to disprove every remote possibility of innocence," *Cantrell v. Commonwealth*, 7 Va. App. 269, 289 (1998), and it is explicitly "not required to prove that there is no possibility that someone else may have planted, discarded, abandoned, or placed" contraband where it is found. *Brown v. Commonwealth*, 15 Va. App. 1, 10 (1992).

During trial, the Commonwealth presented Detective Cooley, expert witness on narcotics packaging and distribution, who testified that the amounts found are "more than likely' being sold (R. 245). She stated that the patterns and behaviors Murrell had were "very significant" indicators of drug distribution, including the cocaine quantities, two scales, usage of a rental car, multiple credit cards, and bill denominations in particular bundles. (R. 246). At the same time, Murrell did not present explanation, response, nor evidence regarding any of

these indicators other than Murrell's statement to the police at the time that the bags must have been planted (R. 193-94).

Murrell explains that the "appellate court has the duty to examine the evidence" and to uphold unless a conviction is "plainly wrong or without evidence to support it," *Tarpley*, 261 Va. at 256 (2001), yet Murrell presents no evidence to the contrary nor provides counter narratives to those of the Commonwealth. The appellate court is required to rule according "the benefit of all inferences fairly deducible from the evidence," *Bolden*, 275 Va. at 148, "in the light most favorable to the Commonwealth." *Perry,* 280 Va. at 578. Given an absence of evidence from Murrell and an alternative explanation form the Commonwealth, the appellate court is compelled to affirm.

IV. CONCLUSION

For the reasons stated above, I recommend this Court **AFFIRM**.

QUESTIONS

APPELLANT

- How is Murrell's refusal to participate in the breath tests, as an alternative after saying the field tests were impaired by his health condition, not unreasonable refusal?
    - Why did counsel mention but not argue the health conditions as grounds for why Murrell refused the breath test?
    - Why was evidence not provided of Murrell's health conditions as corroboration of his inability to pass the balancing tests? What evidence is available to substantiate these conditions or reasons?
- According to case law, "whether or not behavior is reasonable is a question of fact." *Archer v. Commonwealth*, 26 Va. App. 1, 12-13 (1997). Are you arguing with the understanding that this is the case? If not, how do you reconcile this idea?
- By asking this appellate court to reconsider the three elements you contest, you are required to assert per *Bolden*, 275 Va. at 148 that the error was to such an extent that it was "plainly wrong or without evidence to support it." What new evidence do you provide for any one of these three claims that could possibly meet this threshold for our standard of review?

- How do you suggest the court overcome the threshold of evaluating the factual evidence in the light favorable to the Commonwealth, when you present no new evidence in this case?

APPELLEE

- What evidence does the Commonwealth rely on to surpass the "beyond a reasonable doubt" standard that Murrell did in fact drive under the influence when officers arrived on the scene after he was in a parking lot?
- What evidence does the Commonwealth rely on to surpass the "beyond a reasonable doubt" standard that Murrell did in fact unreasonably refuse a breath test, given the health conditions he articulated? Why did the officers not conduct an ABC or other verbal sobriety test?
- At what point did Officer Velez actually identify Murrell's record, and was this information available prior to arrest? If not, what evidence does the Commonwealth consider the most persuasive in establishing a justification for arrest?
- In *Cameron v. Commonwealth* 211 Va. 108, the court finds that a suspicion that the defendant is guilty cannot be sufficient evidence for their guilt. What evidence beyond suspicion do you have, other than Detective Cooley's testimony, that Murrell did in fact meet the threshold for each component of PWID? What is your response to the Appellant's concern that no other evidence (cell phones, large sums of money, cutting agents, firearms, etc.) was available, including alcohol or contraband, in the vehicle?

Applicant Details

First Name	**Miranda**
Middle Initial	**C**
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Contact Phone Number	**4328942585**

Applicant Education

BA/BS From	**Bates College**
Date of BA/BS	**May 2019**
JD/LLB From	**University of Oklahoma College of Law** **http://law.ou.edu**
Date of JD/LLB	**May 11, 2024**
Class Rank	**30%**
Law Review/Journal	**Yes**
Journal(s)	**American Indian Law Review**
Moot Court Experience	**Yes**

Moot Court Name(s) **Hispanic Bar National Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships **Yes**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Professional Organization

Organizations **Latinx Law Student Association (LALSA), Native American Law Student Association (NALSA), Black Law Student Association (BLSA), Hispanic National Bar Association (HNBA), Mexican American Bar Association (MABA), National Native American Law Student Association (NNALSA)**

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Honorable Jamar Walker
Walter E. Hoffman
United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Jamar Walker,

I am writing today to express my interest in securing a clerkship at the federal level within your chambers. As a bisexual Indigenous Mexican woman, so much of my identity is intertwined with two of the fields I am keen on pursuing throughout my legal career: Federal Indian Law and Environmental Law. With my passion for these areas of law and my dedication to making a positive impact, I am confident that a clerkship in your esteemed chambers will provide me with invaluable learning experiences and opportunities to contribute meaningfully to the legal field.

These two fields not only intersect with each other often, they also overlap with different areas of the legal landscape quite often. A clerkship in your court offers a unique platform for me to immerse myself in the intricacies of Federal Indian Law and environmental statutes, which are frequently litigated at the federal level, particularly the federal administrative state. In addition, many state statues are significantly influenced at the federal level. Thus, a federal clerkship will provide me with the unique hands-on experience required to build the skills to successfully practice at both the federal and state levels, provide me with a comprehensive understanding of the federal administrative state firsthand, and allow me to witness different types of advocacies.

As a law student at the University of Oklahoma College of Law, I am an active member of the American Indian Law Review (AILR) and an advisor to the chairperson of the United Nations Committee on Ending Racial Discrimination (U.N. CERD). On AILR, I serve as the Writing Competitions Editor and Assisting Managing Editor. As the Writing Competition Editor, I am responsible for grading and scoring all submissions for the law review's writing competition and the 1L writing competition, where most of the scoring focuses on legal analysis and citations. Then, in my role as Assistant Managing Editor, I am responsible for checking the accuracy and quality of candidate's submissions to our journal. Lastly, as an advisor for the U.N. CERD, I have had to work as a team to prepare reports for State Party Representatives at the U.N. The work included weekly meetings to discuss progress on the specific tasks, next steps for the reports, and work together to design our reports. After my first two sessions, I was promoted to Team Leader, where it was my responsibility to delegate and supervise tasks to a team of four members, as well as provide support as needed and facilitate collaboration between them.

Throughout my legal education, I have gained practical experience as a legal intern at the Oklahoma Indian Legal Services in Oklahoma City, OK and as a clerk at the Western Environmental Law Center in Helena, MT. Throughout these opportunities, I have sharpened my legal and non-legal research skills on a wide range of legal topics and subject matters, including federal statutes such as the Indian Child Welfare Act (ICWA), the American Indian Probate Reform Act (AIPRA), as well as the administrative state, evidence, and civil procedure at both the state and federal level. A clerkship in your chambers would provide me with an environment to further develop my research and writing abilities while contributing to meaningful projects. I believe that my legal experience would make me a valuable addition to your chambers. My strong work ethic and attention to detail have allowed me to excel in demanding environments. Moreover, as an Indigenous Mexican woman, I bring a unique perspective to help tackle complex legal problems.

Thank you for considering my application. I would greatly appreciate the opportunity to discuss further how my skills and experiences align as a clerk within your chambers. Enclosed is my resume for your review.

MIRANDA PADILLA

(432) 894-2585 Miranda.Padilla-1@ou.edu

EDUCATION

The University of Oklahoma College of Law, Norman, OK – candidate for J.D., expected 2024
GPA: 9.32/12 **Rank:** 62/201 (Top 30%)
Honors: American Indian Estates: American Jurisprudence Award (Top Grade in Class)
Deans Honor Roll (Fall 2021, Fall 2022)
1L Moot Court Sweet 16 Team
Activities: Writing Competition Editor/Assistant Managing Editor American Indian Law Review, 2023 Uvaldo Herrera Moot Court Competition Team, 1L Mentor**,** NALSA Moot Court Coordinator, Head Bailiff National Native American Moot Court Competition, Black Law Student Association (BLSA), Native American Law Student Association (NALSA), Hispanic National Bar Association (HNBA), National Native-American Law Student Association (NNALSA)

The University of London School of Advanced Study, London, England – M.A., 2020
Master of Arts in Understanding and Securing Human Rights with Distinction
Dissertation Title: Fracking in the Amazon: A case study of the impact fracking has on Indigenous peoples in the Brazilian Amazon through Raphael Lemkin's physical and cultural genocide, ecocide, and decolonization

Bates College, Lewiston, ME – B.A., 2019
Major: Politics & Women & Gender Studies with Honors
GPA: 3.49
Honors: Arata Scholar
Office of Intercultural Center Fellow
Harward Civic Fellowship
Activities: Women of Color, President

WORK EXPERIENCE

Western Environmental Law Center, Helena, MT **–** Summer 2023 - Present
Clerk. Conduct legal research and draft pleadings, briefs, memoranda, and other legal documents regarding the administrative law on a federal and state level and the Montana Civil Procedures Act. Assist attorneys in preparation of the *Held v. Montana* trial by supporting the development of litigation strategies, attending client meetings, and preparing witnesses.

University of Oklahoma College of Law, Norman, OK – Fall 2022 - Present
Teaching Assistant. Grade and provide feedback on discussion posts in the courses: History of Federal Indian Law and Native American Natural Resources for the Master of Legal Studies in Indigenous Peoples Law. Update courses case list with recent Federal Indian Law cases and work with professors on updating and revising course materials.

United Nations Committee on Ending Racial Discrimination (UN CERD), Norman, OK **–** Summer 2022 - Present
Advisor to the Chairperson of the UN CERD. Current team leader for the country of Senegal. Former team leader for the country of Argentina. Conducted legal and policy research on different minority groups in Nicaragua, France, and Argentina. Reviewed State Party documents and NGO reports. Translated documents from Spanish to English.

Oklahoma Indian Legal Services (OILS), Oklahoma City, OK – Summer 2022 - Winter 2022
Legal Intern. Conducted legal research on the Indian Child Welfare Act (ICWA) and American Indian Probate Reform Act (AIPRA). Performed intakes of clients and carried out Will Questionnaire Interviews. Drafted Wills and Advice Letters regarding ICWA and AIPRA and Initial Pleadings and First and Final Orders for Probates.

Michael J. Cunningham Attorney at Law, Midland, TX – Summer 2017 - Summer 2021
Legal Intern. Conducted legal research on Wills & Trusts at the law library and on online legal databases. Drafted Wills and Initial Pleadings for Divorce and Custody Proceedings.

SKILLS AND INTERESTS

Proficient in Microsoft Office, Westlaw, Lexis, OSCN.

Enjoy building LEGO sets and creating my own builds, trained mixologist, scary movies, hiking, writing and reading poetry.

The University of Oklahoma College of Law

300 West Timberdell Road
Norman, OK 73019
(405) 325 - 4699
http://www.law.ou.edu

Grade Points

A+	12
A	11
A-	10
B+	9
B	8
B-	7
C+	6
C	5
C-	4
D+	3
D	2
D-	1
F	0

THE UNIVERSITY OF OKLAHOMA COLLEGE OF LAW UNOFFICIAL TRANSCRIPT

Padilla, Miranda Claire

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Course	Dept	No.	Hours	Grade
Fall 2021				
Legal Foundations	LAW	6100	1	S
Torts	LAW	5144	4	B+
Constitutional Law	LAW	5134	4	A
Research/Writing & Analysis I	LAW	5123	3	B+
Civil Procedure I	LAW	5103	3	B
GPH: 14	GPS: 131	HA: 15	HE: 15	GPA: 9.357
Spring 2022				
Property	LAW	5234	4	B
Criminal Law	LAW	5223	3	B
Civil Procedure II	LAW	5203	3	B+
Intro to Brief Writing	LAW	5201	1	B+
Contracts	LAW	5114	4	A-
Oral Advocacy	LAW	5301	1	B+
GPH: 16	GPS: 141	HA: 16	HE: 16	GPA: 8.812
Summer 2022				
Federal Indian Law	LAW	5610	3	A-
GPH: 3	GPS: 30	HA: 3	HE: 3	GPA: 10.000
Fall 2022				
Native Amer Natural Resources	LAW	5633	3	A
Immigration Law	LAW	6210	3	A
Evidence	LAW	5314	4	A-
American Indian Estates	LAW	6100	1	A
Amer. Indian Estates Clinic	LAW	6400	3	A
GPH: 14	GPS: 150	HA: 14	HE: 14	GPA: 10.714
Spring 2023				
Int'l Business & Human Rights	LAW	6100	3	B+
Administrative Law	LAW	5403	3	B
Business Associations	LAW	5434	4	B
Remedies	LAW	5553	3	B
GPH: 13	GPS: 107	HA: 13	HE: 13	GPA: 8.231
Fall 2023				
Professional Responsibility	LAW	5323	3	
Bankruptcy	LAW	5410	3	
Conflict of Law	LAW	5533	3	

International Law Foundations	LAW	6060	3	
Tribal Courts Seminar	LAW	6700	2	
Alternative Dispute Resolution	LAW	5520	3	
GPH:	GPS:	HA:	HE:	GPA:

	GPH	**GPS**	**HA**	**HE**	**GPA**
OU CUM:	60	559	61	61	9.317

UNOFFICIAL END OF RECORD ***UNOFFICIAL***

UNIVERSITY OF OKLAHOMA COLLEGE OF LAW
300 W Timberdell Road
Norman, OK 73019

Kit Johnson
Professor of Law

June 8, 2023

Dear Judge,

I write to recommend, unreservedly and enthusiastically, Miranda Padilla for a clerkship in your chambers.

I've had the pleasure of teaching Miranda in three courses: Civil Procedure I, Civil Procedure II, and Immigration. Her performance in these classes revealed aptitude for, curiosity about, and commitment to the law. She evidenced a level of engagement that will make for an excellent judicial clerk.

My knowledge of Miranda extends beyond classroom performance. I have enjoyed hours of one-on-one conversation with Miranda. Some of our conversations have been about substantive law, including review of practice exams and clarification of points of doctrine. More have been about personal issues, from extracurricular activities to career plans and family concerns. Miranda is a genuinely fascinating individual with a wealth of unique life experiences—from competitive sports to bartending in England. She has ended up as a law student with a maturity beyond her years.

I know from experience—two years as a clerk for a federal district court judge and one year as a clerk for a federal circuit court judge—that working in chambers can be tough if you do not have the right mix of individuals in the office. It's a unique environment that demands good humor and sociability. Miranda has those qualities in spades. It is the warmth of her personality—combined with her academic aptitude—that led her to be named as a 2L mentor, a role in which she provides peer guidance and support to 1L students. It is a position that takes high emotional intelligence, something that is one of Miranda's many strengths.

Candidly, I will share that I worry that this letter has not done Miranda justice. It is difficult to capture the character of the young woman I have had the pleasure of getting to know over two years in a few short paragraphs. Know that Miranda is singular. She will be a clerk that you'll remember fondly for years after she leaves your chambers. And I am sure you will soon join me as a fellow Miranda cheerleader—excited for her next adventure and invested in her success.

If I can answer any further questions you might have about Miranda's candidacy, please do not hesitate to call me at 310-621-9025 (cell) or to e-mail me at kit.johnson@ou.edu.

Best regards,

Kit Johnson

Kit Johnson

The University of Oklahoma
COLLEGE OF LAW

Professor Megan W. Shaner
University of Oklahoma College of Law
300 Timberdell Road
Norman, OK 73019
mshaner@ou.edu

June 13, 2023

RE: Letter of Recommendation for Miranda Claire Padilla

Dear Judge Walker,

I understand that Miranda Padilla is applying for a clerkship in your chambers. It is my pleasure to write this letter of recommendation on behalf of Ms. Padilla. She is a smart, hard-working, and detail-oriented student. After reviewing this letter, alongside Ms. Padilla's other application materials, I believe you will agree with my assessment that she has all of the qualities necessary to be an outstanding clerk.

During her 1L year, Ms. Padilla was a well-prepared and contributing member of my Contracts class. She was a student who would ask thoughtful questions and volunteer to engage in classroom discussions. Outside of class, Ms. Padilla would take advantage of office hours – looking to strengthen her skills as a student and lawyer. She took advantage of opportunities to get additional feedback on her legal writing in my class and would discuss her questions and material from class with me in order to gain a better understanding of the law. Ms. Padilla's diligent work resulted in her performance on my final examination placing her 10th out of 50 students in the class.

I again had Ms. Padilla as a student during her 2L year in my Business Associations class. Given the nature of the subject area, Business Associations involves a mastery of different state and federal statutes, case law, and privately-ordered organizational documents. Moreover, the class (and final exam) emphasizes using the law in both transactional and litigation contexts. Ms. Padilla was once again a dedicated student who worked hard over the semester to be able to dissect and apply complex statutory provisions. Her questions revealed a student engaging with the normative and practical issues facing entrepreneurs and policy makers in this area of the law. Ms. Padilla again performed well in my class, finishing in the top half of the class. Candidly, her performance on the multiple-choice portion of the exam is what held back her overall performance. Her essay responses, however, scored in the top third of the class.

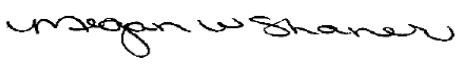
While I have not had the opportunity to directly supervise any of Ms. Padilla's writing projects, in connection with this recommendation I re-reviewed her essay answers on my exams. In her examination responses Ms. Padilla showed both strong writing skills and the ability to understand and apply the legal principles she learned in class. Her responses were clear and well organized, identifying the overall issue and then systematically breaking down the relevant law and facts necessary to reach her conclusion. Further, a comparison of Ms. Padilla's work from her 1L and 2L year show marked growth in her writing and analytical skills, and I can safely assume she will just continue to improve. Based on her performance in my classes it comes as no surprise to me that Ms. Padilla has continued to excel in her studies, being ranked 44th[53] out of 201 students, maintaining a B+ cumulative GPA, and being on the Deans Honor Roll.

In addition to her academic obligations, Ms. Padilla is involved in organizations and activities such as the Deans Leadership Fellows, the Native American Moot Court Competition, the American Indian Law Review, the Lantix Law Student Association, the Native American Law Student Association, the National Hispanic Moot Court Team, and serving as a 1L mentor, to name a few. Setting aside her time to participate in these activities illustrates Ms. Padilla's dedication to giving back to the College of Law and her community. Overall, Ms. Padilla is a very involved and vested student and I believe she serves as a good role model for the student body. She is very collegial and is well respected among her classmates, the faculty, and the staff at the College of Law. The fact that Ms. Padilla is able to balance her academic responsibilities and her service commitments to the College of Law goes to further show her strong work ethic.

Finally, as an individual I have been impressed by Ms. Padilla's maturity and positive attitude. In speaking with Ms. Padilla outside of the classroom she has shown me that she is a genuine, caring student who I have no doubt will continue to excel through her third year of law school and become a successful member of the legal community. I firmly believe that Ms. Padilla would be a valuable colleague and a welcome addition to any office.

It is for these reasons that I believe Ms. Padilla is poised to be an excellent law clerk. Ms. Padilla would bring outstanding written, oral, and analytic skills, a sound work ethic, and a wonderful personality to the position. I recommend her without reservation and with a great deal of enthusiasm. If you have any questions regarding this recommendation, please do not hesitate to contact me.

Sincerely,



Megan W. Shaner
Arch B. & Jo Anne Gilbert Professor of Law
President's Associates Presidential Professor

[53] This is her class rank as of the writing of this letter, with not all spring grades released.

The UNIVERSITY of OKLAHOMA
College of Law

June 15th, 2023

The Honorable Jamar Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Recommendation for Miranda Padilla

Dear Judge Walker,

I am thrilled to write this letter in support of Miranda Padilla's application for a clerkship in your chambers. I have had the pleasure of working closely with Miranda in two capacities: first, when she was a student in my Evidence course; and second, as a de facto mentor for her as she charted her career trajectory. Based on my interactions with her and observations of her work product, work ethic, and interpersonal skills, I recommend her enthusiastically for the clerkship.

Miranda was one of the most engaged students I taught in my Fall 2022 Evidence course. Even though the course had over 80 students, I vividly recall Miranda because of my interactions with her. The class is broken up into law firms, and students in each firm have to work together to analyze problems and provide arguments in favor of or against the admission of evidence. Miranda naturally became the leader of her firm, ensuring that they worked collegially on problems and were prepared when they were on call. Without realizing it initially, I unintentionally called on her more than other students precisely because she was so prepared and her answers were well reasoned. That said, Miranda did not dominate the conversation; rather, she consistently demonstrated solid engagement.

Miranda's exam performance in Evidence was stellar. Although she received an A-minus, that grade easily put her in the top 10% of the class. That said, I think that her understanding of the material was even stronger than reflected in the grade. My guess is that, given the constraints of a timed exam, she was unable to fully demonstrate all that she knew. I have also reviewed a paper that she wrote in preparation for writing this letter, and I can attest to her analytical skills and writing ability.

Andrew M. Coats Hall, 300 Timberdell Road, Norman, Oklahoma 73019-5081, PHONE: (405) 325-4699
WEBSITE: LAW.OU.EDU

But where Miranda shone even brighter was outside of the classroom. She regularly came to my regular office hours to discuss issues. It quickly became apparent that she understood the material, however, so our conversation naturally drifted into other issues in the law school (e.g., law journal, student organizations) and her career. Over time, we developed a strong rapport with one another and I came to realize how important it is for Miranda to seek out opportunities in which she will be able to grow and shine. I brought up the idea of clerking with her, but it turned out that she had already been thinking about it. I firmly believe that the opportunity to clerk would be one of which she would take full advantage.

Miranda is also a natural leader at the law school. I am sure that you already have her resume, so I will not list her involvement in student organizations and co-curricular activities. What I can share is the way that she interacts and engages with those organizations. She puts her whole self into anything she does—more so than most students in the law school, to be frank. She is especially interested in ensuring that law students from underrepresented backgrounds, whether they be racial or ethnic minorities, LGBTQI+ individuals, or those from low economic backgrounds—feel included in our community. To this point, I can speak from experience. As a gay man in Oklahoma, I sometimes felt out of place in the state. Miranda makes a point to check in on me, at least as often as I do on her. I hope this anecdote adequately conveys the type of person Miranda is, beyond the things you can glean from reading about her academic achievements.

There is no doubt that Miranda Padilla has the requisite intellect and training to make an excellent law clerk. However, I strongly believe that her passion for what she does, and the care with which she does it, will make her an excellent addition to your chambers.

Please let me know if you have any questions or would like additional information.

Regards,

Jon J. Lee

LRW Moot Court Brief

I drafted the attached **appellate brief** as an assignment in my second semester Legal Research and Writing course and **used it** in the Moot Court Competition. The assignment required drafting a brief **arguing that a statute banning surreptitious recordings violated the First Amendment**. I independently conducted all of the research for the assignment. By the assignment's instructions, the brief could not exceed 5,000 words.

No. 22-050

IN THE
SUPREME COURT OF THE UNITED STATES
SPRING TERM 2022

JAMIE WHITTEN,

Petitioner,

v.

STATE OF GARNER,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the
Fourteenth Circuit

BRIEF FOR PETITIONER

Counsel for Petitioner

QUESTION PRESENTED

The First Amendment provides citizens and the press protections regarding speech and the gathering and sharing of information about government officials. Whitten was convicted of surreptitiously recording her arrest and subsequent conversation in the police-car. Does Garner Statute Title 75, § 52 that bans surreptitious recordings of conversations without notice violate Whitten's First Amendment rights?

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OPINIONS BELOW

The opinion of the Supreme Court of Garner is located in the Record. (R. at 6-8.)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First Amendment of The United States Constitution, which states: "Congress shall make no law . . . abridging the freedom of speech, or of the press " U.S. Const. amend. I. This case also involves Title 75 Section 52, Subsections (1)-(2), (4):

"[R]ecording all or any parts of a conversation without the consent of all parties violates the right to privacy in communication."

Gar. Stat. tit. 75, § 52(1) (2018).

Section 2. Exceptions:
Section 1 of this act does not apply to:
A. "An elected or appointed public official when the transcription or recording is of the public official discussing an issue of public concern."

Gar. Stat. tit. 75, § 52(2) (2018).

Section 4. Definitions:
As used in this statute, the following definitions apply:
"A 'conversation' includes the interactions between police officers and citizens if the interaction is filmed by a member of the general public."

Gar. Stat. tit. 75, § 52(4) (2018).

STATEMENT OF THE CASE

The Crime. Jamie Whitten is accused of violating Garner Statute, Title 75, § 52, also known as the Anti-Surreptitious Recording Act (ASRA), when she filmed her arrest and the subsequent police-car conversations. (R. at 4-5.) On November 9, 2021, Whitten, an animal rights advocate and twenty others went to Wild Animal Safari to protest the breeding practices of Cats by Carter (CBC). (R. at 3-4.) During the protest, Whitten took her Iphone 13 Pro out of her pocket and began to record the protest as a truck pulled up to the entrance. (R. at 4.) Shortly after the truck arrived, Whitten slipped the phone back in her pocket. (R. at 4.) After being identified by the driver, Whitten was arrested by Officer Coffee. (R. at 4.) Whitten was then transported to the station by Officer Coffee and Officer Theodore. (R. at 4.) Before Whitten was placed in her holding cell, Officer Coffee asked Whitten to empty her pockets. (R. at 4.) When emptied her pockets, Officer Coffee noticed her phone was recording. (R. at 4.) When asked by Officer Coffee if she was recording, Whitten did not answer. (R. at 4.) She did, however, stop recoding when prompted by Officer Coffee. (R. at 4.) Officer Coffee confiscated her phone on the belief that Whitten violated ASRA by recording her arrest and subsequent police-car conversations. (R. at 4.) Whitten pleaded no contest to the charge, preserving her right to appeal. (R. at 5).

Appeal. The Supreme Court of Garner affirmed Whitten's. (R. at 2.) Whitten filed a petition for certiorari, claiming that ASRA violates her First Amendment

right to record conversations without notice, specifically recording her arrest and the subsequent police-car conversations. (R. at 4).

This Court granted Whitten's writ of certiorari to determine whether ASRA violates the First Amendment as applied to Whitten. (R. at 1.)

SUMMARY OF THE ARGUMENT

The First Amendment of the Constitution guarantees the right to free speech and freedom of the press. U.S. Const. amend. I. The right to record police is recognized as a First Amendment right in many circuits depending on restrictions. *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000). Because of the time, manner, and place restrictions on the recording of police, this Court should not lean on precedent when deciding the outcome of this case and look at this case individually. *Turner v. Driver*, 848 F.3d 678 (5th Cir. 2017).

ASRA is unconstitutional for three main reasons. First, ASRA fails intermediate scrutiny because the state's argument that police are entitled to privacy is not a substantial government interest. Second, ASRA violates the First Amendment right to free speech because the act of recording is speech. Last, because Whitten is a journalist and was recording a matter of public interest, police activity, ASRA violates her right to gather and share government information. For these reasons the Court should find that ASRA violates Whitten's First Amendment rights.

ARGUMENT AND AUTHORITIES

Garner Statue Title 75, § 52 (2018) violates Whitten's First Amendment right to freedom of speech. The First Amendment states "Congress shall make no law . . . abridging the freedom of speech, or of the press. . ." U.S. Const. amend. I. To pass the constitutional muster of intermediate scrutiny a statute must be substantially related to a government interest. Anti-Surreptitious Recording Act (ASRA) § 1 fails intermediate scrutiny because "the right to privacy in communication" is not a substantially related government interest regarding police privacy. Gar. Stat. tit. 75 § 52(1). ASRA § 1 also violates Whitten's First Amendment right to freedom of speech and freedom of the press because the banning of surreptitious recording "all or any parts of a conversation without the consent of all parties" infringes on Whitten's process of speech and her right to gather and share government information. *Id.* Further, Whitten's actions of recording the police surreptitiously falls within an exception of ASRA; ASRA § 2(A): "An elected or appointed public official when the transcription or recording is of the public official discussing an issue of public concern." § 52(2).

Several circuit courts have held that there is a right to record police in public spaces under the First Amendment, subject to "time, manner, and place restrictions." *See Smith v. City of Cumming*, 212 F.3d 1332, 1333 (2000). However, some courts, such as the Third Circuit, have found that the right to record police is not protected under the First Amendment. *See* Eric M. Larsson, Annotation, *Criminal and Civil Liability of Civilians and Police Officers Concerning Recording of Police Actions*, 84 A.L.R. 6th 89 (2013). Because of the circuit split, it is not

clearly established that the right to record police in public and privates exists within the First Amendment. However, no circuit court has held that the right "does *not* extend to the video recording of police activity." *Turner v. Lieutenant Driver*, 848 F.3d 678 (2017). Because this Court has instructed the lower courts to not take a high generality when discussing established law, as the right to recording police has been established, this Court should look at these cases on a case-by-case basis and not lean heavily on precedent. *Id.* at 678.

The right to record police is a right that has been recognized by many circuit courts, meaning that Whitten was within her rights to record her arrest and police-car conversations. However, because it has not been established within the circuits that that right is protected under the First Amendment, and it has not been established if the right extends to arrests and police-car conversations, the Garner Supreme Court erred by relying on the Third Circuit's decision in *Kelly v. Borough of Carlisle*. *Kelly v. Borough of Carlisle*, 622 F.3d 248 (3d Cir. 2010). Given that these cases should be decided on a time, manner, and place analysis, the Court should look at the facts of this case and find that ASRA fails intermediate scrutiny, violates Whitten's First Amendment right to freedom of speech, and violates her right to gather and share government information as she occupies the role of a citizen journalist. *Smith*, 212 F.3d at 1333.

ASRA VIOLATES WHITTEN'S FIRST AMENDMENT RIGHT TO RECORD HER ARREST AND SUBSEQUENT POLICE-CAR CONVERSATION WITH OFFICERS.

A. ASRA fails intermediate scrutiny.

ASRA fails intermediate scrutiny**.** ARSA § 1 uses the language, "the right to privacy in communication," emphasizing that one of the government interests is to ensure that individuals who expect privacy during a conversation are given that privacy. Gar. Stat. tit. 75 § 52(1). In this case, the Court must determine if Officers Coffee and Theodore were entitled to privacy while they were arresting and transporting Whitten to the station.

Under *Ward v. Rock Against Racism*, ASRA must be "narrowly tailored to serve a significant governmental interest, and [ ] leave open ample alternative channels for communication of the information." *Ward v. Rock Against Racism,* 491 U.S. 781, 791 (1989) (quoting *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 293 (1984). To be narrowly tailored it must be speech that is not the "least-restrictive or the least-intrusive means of doing so." *Ward v. Rock Against Racism* at 798.

One of the identified government interests is privacy. (R. at 3.) To help achieve this government interest, the Garner legislature ratified ASRA. Under *Ward*, the government interest of privacy, especially for police officers is not a narrowly tailored government interest.

1. *Police Officers are not entitled to the same privacy expectations as non-officers.*

To determine whether police are entitled to privacy, this Court should look to the two-fold privacy analysis found in Justice Harlan's concurrence in *Katz v. United States*. The first step looks to see if the entity has an expectation of privacy. *Katz v. United States*. 389 U.S. 347, 361 (1967). The language of ASRA, specifically "the right to privacy in communication" suggests that police, like non-officers, are entitled to privacy. Gar. Stat. tit. 75 § 52(1). However, that is simply not the case when police are performing their duties. This is evidenced by the fact that numerous courts have found that people are allowed to record police in public when they are performing their duties. *Glik v. Cunniffe*, 655 F.3d 78, 84 (1st Cir. 2011). If there was an objectively reasonable expectation of privacy, courts would not have allowed for police to be recorded anywhere in public. *Project Veritas Action Fund v. Rollins*, 982 F.3d 813, 822 (5th Cir. Dec. 2020).

The second step of the privacy analysis is that "the privacy expectation is one that society is prepared to recognize as 'reasonable.'" *Katz*, 389 U.S. at 361. Evidenced by the fact that people are constantly recording police activity, including arrests, serves as proof that the public does not recognize that police have the same expectation of privacy. *Project Veritas* 982 F.3d at 822. This case is most similar to *Project Veritas*. *Project Veritas* involved a Massachusetts statute that made it a crime to record government official's discharging their duties in public spaces without their consent, and the recording of conversations with a people who had a

reasonable expectation of privacy. *Id.* at 820. In *Project Veritas*, the plaintiffs filed suit, claiming that portions of the Massachusetts statute violated their First Amendment right to gather and share government information. *Id.* The court held that statute did not meet the constitutional muster of intermediate scrutiny because it was not "narrowly tailored to further. . . prevent [ ] interference with police activities and protect [ ] individual privacy." *Id.* at 836. The court stated that preventing interference with police activities is not a substantial government interest because police officers are expected to "endure significant burdens caused by citizens' exercise of their First Amendment rights." *Glik*, 655 F.3d at 84. This burden includes a lack of privacy when performing their official duties. *Project Veritas*, 982 F.3d at 838. Because police privacy is not a narrowly tailored government interest, this Court should follow *Project Veritas* and find that ASRA does not pass the constitutional must of intermediate scrutiny.

2. *The Supreme Court of Garner erred when it relied on the Third Circuit's ruling in Kelly v. Borough of Carlisle.*

The right to record police is subject to "time, manner, and place restrictions." *Smith*, 212 F.3d at 1333. The Garner Supreme Court stated that because of these restrictions, ASRA does meet intermediate scrutiny, because it allows surreptitious recording in some exceptions and consensual recording. (R. at 6-7.) However, the "time, manner, and place restrictions" mean that courts should analyze these cases on a case-by-case basis and not rely heavily on precedent. *Id.*; *Turner v. Lieutenant Driver*, 848 F.3d at 678. This case is factually different than *Kelly v. Borough of Carlisle*, the case from the Third Circuit that the Supreme Court of Garner relied

on. In *Kelly*, Kelly was out with his friend, Tyler Shopp, who was pulled over for speeding and violating the bumper height restrictions. *Kelly v. Borough of Carlisle*, 622 F.3d 248, 251 (3d Cir. 2010). During the traffic stop, Kelly began to record Officer Rodgers "'after he saw how [Officer Rodgers] was acting'. . . and yelling at Shopp." *Id.* Officer Rodgers placed Kelly under arrest for violating the Pennsylvania Wiretap Act. The Third Circuit held that Kelly's First Amendment right to record during a traffic stop was not violated because "the cases addressing the right to information and the right of free expression do not provide a clear rule regarding First Amendment rights to obtain information by videotaping under the circumstances presented here." *Id.* at 263.

Whitten pleaded no contest when she recorded her arrest and subsequent police-car conversation with Officer Coffee and Officer Theodore. Whitten was arrested at an animal rights protest on Wild Animal Safari after she threw a rock and hit someone. (R. at 3-4.) Prior to her interaction with police, Whitten had already been recording the protest at Wild Animal Safari. (R. at 4). Unlike Kelly, Whitten did not pull out her phone after she began to interact with the police. Nor did she pull out her phone because she felt unsafe because of the Officers behavior. Because this case is factually different then Kelly, and because it has been established that people can record police while they are performing their duties, this Court should find that the Supreme Court of Garner erred when it relied on the Third Circuit for guidance, and that ASRA violates the First Amendment.

B. ASRA violates Whitten's First Amendment right to freedom of speech and freedom of the press.

1. *The right to freedom of speech includes the process of speech.*

Whitten's right to record police is constitutional under the First Amendment's right to free speech. The right to record falls within the right to free speech because there is "no line between the act of creating speech and the speech itself." *ACLU of IL v. Alvarez*, 679 F.3d 583, 596 (7th Cir. 2012). The right to record has long been recognized as a mechanism for speech. *Id.* Whitten was accused of recording the police surreptitiously and violating ASRA by recording "all or any parts of a conversation without the consent of all parties" because the Officers were not aware that she was recording. *See* Gar. Stat. tit. 75, § 52(1). However, while police officers are operating within their official duties publicly, consent of the other party is not needed. *Project Veritas*, 982 F.3d at 820; *see also Glik,* 655 F.3d at 82. The arresting officers at the time were being recorded by Whitten while performing their official duties. (R. at 4-5.) They were arresting Whitten and transporting her to the station. (R. at 4-5.) Meaning, Whitten was within her right to record her arrest and subsequent police-car conversation. Because Whitten was within her right to record and because the act of recording is a process that is protected under the First Amendment's right to free speech, ASRA violated her First Amendment right to free speech.

2. *ASRA violated Whitten's First Amendment right to gather and share government information.*

The First Amendment freedom of the press gives individuals of the press the right to gather and disseminate information without government interference. *ACLU*, 679 F.3d at 597. Under freedom of the press, "the act of making an audio or audiovisual recording . . . [i]s a corollary right to disseminate the resulting recording." *Id.* at 595. Those who are protected under the press includes reporters, the media, and journalists. There is variation among the states about who is a designated journalist. Some states have adopted a reporter-based notion, but other states have established that journalistic privilege extends "to all persons who gather and disseminate news to the public." Laura K. Layton, defining "Journalist": *Whether and How A Federal Reporter's Shield Law Should Apply to Bloggers*, 1 Nat. L. Rev. 75 (2011). While there is no consensus among states as to who constitutes a journalist, there is no question that the advancement of technology today has allowed non-trained journalists to occupy the role of the press, because of their ability to break news stories and share information just as quickly as news outlets. *Fields v. City of Philadelphia*, 862 F.3d 353, 360 (3d Cir. 2017). The technological advancement of devices with video-recording capability means that images, videos, and recordings about current events come from participants and observers. *Id.* "A citizen's audio recording of on-duty police officers' treatment of civilians in public spaces while carrying out their official duties, even when conducted without an officer's knowledge, can constitute newsgathering every bit as much as a

credentialed reporter's after-the-fact efforts to ascertain what had transpired." *Project Veritas*, 982 F.3d at 833.

i. Whitten occupies the role of a journalist because of the circumstances surrounding her arrest.

Based on the facts and circumstances surrounding her use of her Iphone 13 Pro to record, Whitten occupied the role of a journalist. Whitten was at an animal rights protest at Wild Animal Safari protesting the conditions and breeding practices of CBC. (R. at 3.) Whitten, a prominent animal rights advocate was there on behalf of Garner Animal Shelter. (R. at 3.) During the protest Whitten visibly pulled out her Iphone 13 Pro when a truck began to pull into the entrance and began recording (R. at 4.) Given Whitten's status as an animal rights advocate and the circumstances surrounding her recording, it can be inferred that Whitten was going to share the video for public consumption to bring awareness to the ill practices of CBC and Wild Animal Safari. Because Whitten occupied the role of a journalist during the protest, her protections under the First Amendment extend to her subsequent arrest and police-car conversation,

ii. ASRA violated Whitten's right to gather and share information about government officials because police activity is a matter of public interest.

The First Amendment right to gather and share information about government officials is guaranteed under the freedom of the press clause. *ACLU*, 679 F.3d at 597. Under the freedom of the press clause, Whitten had the right to record police. In *Glik*, the court held that the "gathering of information about government officials in a form that can readily be disseminated to others serves a

cardinal First Amendment interest in protecting and promoting 'the free discussion of governmental affairs.'" *Glik*, 655 F.3d at 82 (quoting *Mills v. Alabama,* 384 U.S. 214, 218 (1966)). Expanding the right to record police while they are making an arrest and within their police-cars would give people the opportunity be involved in the community by "freely exercising their freedom of speech" and allowing citizens to, "'embrace[ ] at the least the liberty to discuss publicly and truthfully all matters of public concern." *ACLU*, 679 F.3d at 597 (quoting *Thornhill v. Alabama,* 310 U.S. 88, 101–02, (1940)). These are values and the liberties that this country was founded upon. By allowing citizens to have a say in police activity, they are participating in a public interest. *Fordyce v. City of Seattle,* 55 F.3d 436 (9th Cir. 1995).

In regard to police activity, "the freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." 32 Andre V. Jezic et al., *Videotaping Police in the Performance of their Duties* § 32:4 Westlaw (database updated Dec. 2021). While recording is not verbal speech, ASRA recognizes police interactions as a form of conversation just like oral speech. Gar. Stat. tit. 75, § 52(4)(A). Whitten being able to record the police surreptitiously during her arrest and police car conversation is an exercise that is guaranteed under freedom of the press. More so, because of her ability to engage with the public through her recording of her arrest and police-car conversation which are matters of

public interest, Whitten's role as occupying that of a journalist was further solidified.

Whitten's arrest and police-car conversation is a matter of public interest because of the recent awareness in police brutality. Advancement in technology, has allowed individuals to easily record and share videos, photographs, audio-recordings of interactions between the police and people. Larsson, supra p. 5. Much of these images and recordings have occurred without police consent. *Id.*

While not having consent violates ASRA by "recoding all or any parts of a conversation without the consent of all parties," the benefits of recording police without notice outweigh the negatives. *See* Gar. Stat. tit. 75, § 52(1). Allowing people to record without police consent works to increase public awareness about the "conduct of law enforcement" that may be different or not how officers would conduct themselves if they knew they were being recorded. *Project Veritas*, 982 F.3d at 833. The plaintiffs in *Project Veritas* noted that "audio recording [surreptitiously] can sometimes be a better tool for 'gathering information about' police officers conducting their official duties in public.'" *Id*. Meaning that Whitten recording her interaction with the officers during her arrest and the conversation in the police-car would have added to the awareness of the public in police brutality. There are also practical reasons to allow people to record their arrest and conversations in police cars. Recording police would allow for gaps to be filled when police officers fail to turn on their body and dash cameras or choose to withhold footage from the public.

Fields, 862 F.3d at 359. It would highlight abuse, hold police accountable, and promote a better functioning government. *Glik*, 655 F.3d at 82.

Arguably, allowing individuals to record their arrest and subsequent police-car conversations would interfere with police when they are performing their duties. This argument was raised in *Fields*. The court ruled that the defendants photographing and recording police did not interfere with police activity and, therefore, their arrest violated the First Amendment. *Fields* 862 F.3d at 360. *Fields* provided an example of what kind recording or videotaping would interfere with police activity: "recording a police conversation with a confidential informant." *Id.* at 361. Further, the First Circuit in *Glik* held that Glik videotaping police officers did not interfere with the officers performing their duties and therefore his action of videotaping was protected under the First Amendment. *Glik*, 655 F.3d at 84. Here, Whitten's recording did not interfere with her arrest or with the officers driving her to the station, as evidenced by the fact that Officer Coffee did not even realize Whitten was recording until he asked Whitten to empty her pockets. (R. at. 5.) Because Whitten's recording did not interfere with the Officers performing their duties, and ASRA violates Whitten's right to gather and share information about police activity, this Court should find that ASRA violates Whitten's First Amendment right to freedom of the press.

CONCLUSION

Because Anti-Surreptitious Recording Act (ASRA) fails intermediate scrutiny; violates petitioners First Amendment right to gather and share

information about government officials, a right that is guaranteed under the First Amendment; ASRA is unconstitutional because it violated the First Amendment. Petitioner respectfully requests that this Court REVERSE the Supreme Court of Garner and find petitioner not guilty of violating ASRA.

Respectfully submitted,
Attorney for Petitioner
123 Main Street
Garner City, Garner 88888
(555) 222-1111 Telephone
(555) 222-1112 Facsimile
MoreJustice@OULaw.com

CERTIFICATIONS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this brief for Petitioner was served on all parties on March 6, 2022, by depositing the briefs in the U.S. Mail, postage prepaid or by personal delivery.

CERTIFICATE OF COMPLIANCE

I certify that this brief contains 4,734 words, including every page except appendices, if any.

Respectfully submitted,
Attorney for Petitioner
123 Main Street
Garner City, Garner 88888
(555) 222-1111 Telephone
(555) 222-1112 Facsimile
MoreJustice@OULaw.com

Applicant Details

First Name	**Miranda**
Middle Initial	**A**
Last Name	**Paez**
Citizenship Status	**U. S. Citizen**
Email Address	**mirandapaez@berkeley.edu**
Address	**Address** Street **4735 Matterhorn Way** City **Antioch** State/Territory **California** Zip **94531** Country **United States**
Contact Phone Number	**(626)841-9567**

Applicant Education

BA/BS From	**University of California-Berkeley**
Date of BA/BS	**May 2019**
JD/LLB From	**University of California, Berkeley School of Law** **https://www.law.berkeley.edu/careers/**
Date of JD/LLB	**May 10, 2024**
Class Rank	**School does not rank**
Law Review/ Journal	**Yes**
Journal(s)	**California Law Review, La Raza Law Journal, Berkeley Technology Law Journal**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Saul Lefkowitz Trademark Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Professional Organization

Organizations	**Just The Beginning Organization**

Recommenders

Hurley, Patricia
pplunkett@berkeley.edu
DiGennaro, Diana
ddigennaro@berkeley.edu
510.642.1870
Chemerinsky, Erwin
echemerinsky@law.berkeley.edu
5106426483

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Miranda A. Paez

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June 12, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year law student at the University of California, Berkeley School of Law, applying for a judicial law clerk position in your chambers for 2024-2025 or any future term. Your commitment to public service as an Assistant United States Attorney and dedication to uplifting your community set an example I aspire to follow. Further, I am applying to your chambers, in particular, because of your commitment to supporting underrepresented law students and lawyers. I am the proud daughter of a single mother, granddaughter of Mexican immigrants, first-generation college graduate, and law student interested in pursuing a career in government. I am confident my personal background, professional experience, legal writing skills, and passion will make me a great asset to your chambers.

My judicial externship with Judge Corley in the Northern District of California solidified my interest in clerking because I saw firsthand the public service judicial law clerks can provide. As an extern, I led judicial orders from bench memoranda to filing and orally presented the pertinent legal issues to the Judge prior to hearings. Additionally, in law school, I have continuously pursued opportunities to improve my legal research and writing skills. As a *California Law Review* editor, Research Assistant to Dean Erwin Chemerinsky, and Moot Court competitor, I have researched novel areas of law, edited legal scholarship, and written an award-winning legal brief. Serving as a law clerk in your chambers is an opportunity to contribute my perspective to judicial processes, develop my legal writing skills, and observe effective lawyering to become a more refined legal advocate.

Further, because of my passion for educational equity and dedication to serving my community, during law school, I have continued to lead programming for the organization I founded, called El Monte Scholars. El Monte Scholars provides high school and community college students in my majority-minority hometown with resources, such as mentorship and webinars on college applications and financial aid. I created El Monte Scholars to fill a resource gap in my hometown and, ultimately, to increase the percentage of low-income, minority students obtaining a higher education.

My professional and personal experiences have left me both well-prepared and eager to clerk. I find the problem-solving nature of legal research and writing both intellectually challenging and empowering. And as someone who grew up in a mixed-immigrant status family and a heavily policed neighborhood, I bring an important perspective. My passion for the law is rooted in my reality.

I would enthusiastically welcome the opportunity to support the work of your chambers. My resume, law school transcript, three references, and a writing sample from my judicial externship are attached. Three letters of recommendation will be arriving separately. If you have any questions, please do not hesitate to contact me. Thank you for your time and consideration.

Respectfully,

Miranda A. Paez

Miranda A. Paez

4735 Matterhorn Way, Antioch, CA 94531 | mirandapaez@berkeley.edu | (626) 841-9567

EDUCATION

University of California, **Berkeley School of Law**, Berkeley, CA
J.D. Candidate, May 2024
Honors: Berkeley Law Opportunity Scholar (full-tuition scholarship); Saul Lefkowitz Trademark Moot Court Competition – Third Place Overall in Region; Hispanic National Bar Association Intellectual Property Law Scholar; Sidley Austin Diversity Scholar; Hispanic Scholarship Fund Scholar
Activities: *California Law Review*, Associate Editor; Board of Advocates, Moot Court Team; Coalition of Minorities in Technology Law, President; *La Raza Law Journal*, Submissions Editor; Halloum 1L Negotiations Competition, Competitor; First Generation Professionals; La Alianza; Women of Color Collective

University of California, **Berkeley**, Berkeley, CA
B.A., Political Science, with Honors, May 2019
Honors: Political Science Department Honors Program; Charles H. Percy Undergraduate Grant for Public Affairs Research; Congressional Hispanic Caucus Institute Public Policy Fellow; California Capital Fellow; Educational Opportunity Program Achievement Award; Latinx Alumni Association Scholar
Research: Senior Honors Thesis: *Oakland Ceasefire: Evaluating Ceasefire's Impact on Youth Violence*; Undergraduate Research Assistant to Professor Rodney Hero
Activities: Student Government Senate Office, Chief of Staff; Lambda Theta Alpha, President

Pasadena City College, Pasadena, CA
A.A., Social and Behavioral Sciences, Humanities with Honors, May 2016
Honors: Honors Transfer Program; Alpha Gamma Sigma Honor Society; Phi Alpha Delta

EXPERIENCE

United States District Court for the Northern District of California, San Francisco, CA — October 2025-October 2026
Judicial Law Clerk to the Honorable Sallie Kim

Sidley Austin LLP, San Francisco, CA — May 2023-July 2023
Litigation Summer Associate

Berkeley Law Dean and Distinguished Professor of Law Erwin Chemerinsky, Remote — January 2023-May 2023
Research Assistant
Researched Article V procedures. Line-edited, cite-checked, and blue-booked a chapter of a forthcoming book on constitutional law.

United States District Court for the Northern District of California, San Francisco, CA — January 2023-May 2023
Judicial Extern to the Honorable Jacqueline Scott Corley
Researched and drafted bench memoranda and judicial orders, including regarding a motion to dismiss and a motion for summary judgment. Observed civil and criminal hearings, trials, and settlement conferences.

Oracle, Redwood Shores, CA — May 2022-July 2022
Legal Intern
Synthesized research on non-cancellable agreements into a memorandum for a mediation and drafted a corresponding Executive Summary for Oracle executives. Researched and compiled global privacy legislation on data subject access rights.

El Monte Scholars, Remote — July 2021-May 2023
Founder
Created a virtual organization to provide college application and professional resources to first-generation, low-income, and minority high school and community college students in El Monte, California.

United States Court of Appeals for the Ninth Circuit, San Francisco, CA — August 2020-July 2021
Docket Clerk
Analyzed and summarized motions, petitions, and briefs for review by managing docket clerks. Organized new appeals and petitions, reviewed lower court and agency dockets and records, and determined case schedules. Filed and served orders on parties, communicated case information to parties, and answered pro se inquiries about hearings and case status.

Medina Orthwein LLP, Oakland, CA — February 2020-March 2020
Legal Assistant
Drafted pleadings, discovery requests, and demand letters in employment discrimination matters. Managed client intake and correspondence. Published social media posts on employment law issues and LGBTQ+ prisoner rights.

SKILLS AND INTERESTS

Spanish (Intermediate), Puppy Training, Thriller Films, Strength Training, Los Angeles Dodgers.

CALCENTRAL

Academic Summary

Student Profile

Name	Miranda Allison Paez
Student ID	3032383004
Major	Law Professional Programs Law JD
Academic Career	Law
Level	Professional Year 2
Expected Graduation	Law JD Spring 2024
Cumulative Units	**Total Units** 56 **Law Units** 56
Degree Conferred	🎓 **Bachelor of Arts** in **Political Science** Awarded: May 17, 2019 College of Letters and Science Honors in Political Science

Enrollment

Fall 2021

Class	Title		Un.	Law Un.	Gr.
LAW 200F	Civil Procedure		5	5	P
LAW 201	Torts		4	4	P
LAW 202.1A	Legal Research and Writing		3	3	CR
LAW 230	Criminal Law		4	4	P
		Earned Total:	**16**	**16**	

Spring 2022

Class	Title	Un.	Law Un.	Gr.
LAW 202.1B	Written and Oral Advocacy **Units Count Toward Experiential Requirement**	2	2	H
LAW 202F	Contracts	4	4	P
LAW 220.6	Constitutional Law **Fulfills Constitutional Law Requirement**	4	4	P
LAW 275.3	Intellectual Property Law	4	4	P
	Earned Total:	**14**	**14**	

Fall 2022

Class	Title	Un.	Law Un.	Gr.
LAW 207.5	J.D. Advanced Legal Writing **Fulfills 1 of 2 Writing Requirements**	3	3	H
LAW 210	Legal Profession **Fulfills Professional Responsibility Requirement**	2	2	H
LAW 235.32	Youth Justice Law, Practice and Policy	2	2	H
LAW 244.91A	Appellate Competition Intensive Part 1 **Units Count Toward Experiential Requirement**	1	1	CR
LAW 250	Business Associations	4	4	P
	Earned Total:	**12**	**12**	

Spring 2023

Class	Title	Un.	Law Un.	Gr.
LAW 289A	Judicial Externship Seminar **Units Count Toward Experiential Requirement**	1	1	CR
LAW 295.3P	Lefkowitz Moot Court Competition	1	1	CR
LAW 295.8B	Judicial Externships: Bay Area **Units Count Toward Experiential Requirement**	11	11	CR
LAW 297	Self-Tutorial Seminar	1	1	CR
	Earned Total:	**14**	**14**	

Fall 2023

Class	Title	Un.	Law Un.	Gr.
LAW 216	Law, Accounting, and Business Workshop	2	2	—
LAW 231	Criminal Procedure - Investigations **Units Count Toward Race and Law Requirement**	4	4	—
LAW 241	Evidence	4	4	—
	Enrolled Total:	**16**	**16**	

Class	Title	Un.	Law Un.	Gr.
LAW 245	Negotiations **Units Count Toward Experiential Requirement**	3	3	—
LAW 265.41	Religion & Equality in a Diverse World **Fulfills 1 of 2 Writing Requirements**	2	2	—
LAW 272.33	Environmental Health Law Through Film **Units Count Toward Race and Law Requirement**	1	1	—
	Enrolled Total:	**16**	**16**	

Summary

	Un.	Law Un.
Earned Total:	**56.0**	**56.0**

Berkeley UNIVERSITY OF CALIFORNIA

Grading Policy

Understanding the Berkeley Law Grading System

A number of lawyers who regularly interview at Berkeley Law have told us that they sometimes have difficulty evaluating the academic records of our students or comparing them with those of students at other schools. This webpage attempts to address those concerns.

Students can receive one of five grades in courses at Berkeley Law: High Honors (HH), Honors (H), Pass (P), Pass Conditional/Substandard Pass (PC), or No Credit (NC). In first-year JD classes, the curve for honors grades is strict–the top 40 percent of the class receives honors grades, with 10 percent of the class receiving High Honors and the next 30 percent receiving Honors. There is no required curve for the grades of Pass and below, and faculty members are not required to give any Substandard Pass or No Credit grades. In second- and third-year classes, up to 45 percent of the class can receive honors grades, of which up to 15 percent of the class can receive High Honors. In small seminar classes, the curve still exists, but it is further relaxed. A very few courses are graded on a Credit (CR)/No Pass (NP) basis.

NOTE: 2020-2021 GRADING POLICY IN LIGHT OF COVID-19 PANDEMIC
For the Fall 2020 and Spring 2021 semester, all substandard pass grades will appear as pass grades on Berkeley Law transcripts.

Berkeley Law students are not ranked by their academic records. Nor do we calculate grade point averages (GPAs). Moreover, the grade ranges described above often do not make fine distinctions. A student who received a Pass grade, for example, may have done very strong or only minimally passing work. How then can employers make sense of Berkeley Law transcripts?

Here are some suggestions:

Students are graded on a curve, which strictly limits recognition for excellence. At Berkeley Law, the grading system has remained constant for more than 25 years. There has been no grade inflation, even though the credentials of our students–whether measured by undergraduate GPA, LSAT score, or prior life attainments–are far stronger than they were 25 years ago.

With a fixed curve and a talented student body, an Honors grade represents a substantial achievement and a High Honors grade an outstanding one. For internal purposes, the Berkeley campus translates both Honors and High Honors grades into its system as A's. (However, if you receive a transcript which lists letter grades from a Berkeley Law student, please return it to the student and require that he or she provide a transcript from the law school Registrar's Office, not from the main campus.)

A student with mostly Honors grades is doing excellent work in very competitive company. And a transcript with a rough mixture of Honors and Pass grades represents strong performance that would likely stand above the class median at schools of comparable quality.

Second, keep in mind that Berkeley Law's student body is exceptionally strong. For example, the class that entered Berkeley Law in the fall of 2016 (i.e., the Class of 2019) had a median college GPA of 3.79, and a median LSAT score of 166 (in the 93rd percentile).

Third, in evaluating student records with more Pass grades, it is important to remember that a significant number of students receive such grades even though they have written examinations that placed them above or near the class median. At schools with more conventional grading systems, median performances often earn a grade of B+. Thus even a record with no or few High

Honors or Honors grades may conceal considerable academic distinction. For example, each year a few Berkeley Law students whose exam performance places them at or above the class median in their first-year courses fail to achieve a single Honors grade. Sometimes such students can provide letters from their instructors documenting their strong performance. In other cases, one must speak to academic references, review writing samples, weigh journal commitments, or evaluate the quality of the undergraduate record in order to form a fair estimate of the student's achievement and potential.

Finally, we at Berkeley Law want to ensure that you receive the information you need to make reasoned choices both between law students and graduates from other schools and among Berkeley Law students and graduates. You should feel free to call faculty references given by students. If you have additional questions, contact our Assistant Dean for Career Development, Terrence Galligan, at 510-642-7746.

A Note about LLM and JSD Student Grades

A separate mandatory curve applies to all LLM and JSD students in classes and seminars with 11 or more LLM and JSD students such that 20% of the LLM and JSD students receive HHs, 30% receive Hs, and 50% receive Ps. The same curve is recommended for LLM and JSD students in classes and seminars with 10 or fewer LLM and JSD students.

June 1, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I wholeheartedly recommend Miranda Paez for a judicial clerkship. Miranda's goal in pursuing a clerkship is related to the same goal that drives her focused approach to law school: to hone her impressive lawyering skills, and to inspire and encourage other students from similar backgrounds to do the same.

Miranda is a bright and determined student who uses resources wisely in order achieve her educational and professional goals. Miranda grew up in a neighborhood and a family that was impacted by the "school-to-prison pipeline" and as an undergraduate at U.C. Berkeley, she authored an award-winning research paper on a local youth violence prevention program while also working on Latino student recruitment and retention.

Even during the first few weeks at Berkeley Law, when many of the 1Ls were still settling in, Miranda drafted well-reasoned objective memos for my Legal Research and Writing class. Her written work highlighted her strong analytical and writing skills. Miranda also came to many of my office hours with a list of good questions, and she spent significant effort revising her memos based upon my feedback, which elevated her final drafts to a higher level than many of her peers.

During the spring semester, the focus of my first-year skills class shifted from objective to persuasive legal writing, and Miranda showed great facility in making this transition. In my Written and Oral Advocacy (WOA) class, Miranda excelled in all her written work as well as oral advocacy, for which she earned an Honors grade.

Miranda was assigned to represent a workers' rights group pursuing a FOIA request which a government agency had denied based on a privacy exemption. Miranda was engaged in the topic early on, finding relevant cases and weighing arguments well before the first draft was due. Miranda's first draft contained arguments that were more well-developed than her classmates. In her final brief, Miranda persuasively argued that the agency could not withhold a video record under Exemption 6 because the public interest in obtaining information about a fatal construction accident outweighed the privacy interests of the surviving family members. In her strong public interest section, she marshalled the facts and cases to show that the video was the best record of the work site prior to the accident, and that substantial taxpayer expenditure on the project further weighed toward disclosure.

At her oral argument, Miranda demonstrated a depth of knowledge about the legal issues and our record, and a great ability to respond to questions from the judges. Miranda confidently emphasized the ways in which the release of the video would advance the public interest by providing valuable information about the agency's operation.

In addition to her impressive research and writing skills, Miranda holds several leadership roles on journals and other law school groups that reflect her interests. She is an editor for both the California Law Review and the La Raza Law Journal, and she also serves as President of the Coalition of Minorities in Technology Law. Her experience externing with Judge Corley (N.D. Cal.) this semester has further piqued her interest in clerking after graduation.

Miranda's intelligence and diligence will make her a valuable and resourceful clerk. Moreover, as a former staff attorney at the Ninth Circuit, I am sure that Miranda's background as a docketing clerk at that court will be extraordinarily helpful in chambers.

Please contact me if I can be of any further assistance regarding Miranda Paez's clerkship application.

Sincerely,

Patricia Plunkett Hurley
Professor of Legal Writing
Legal Research, Analysis, and Writing Program
University of California, Berkeley School of Law

May 1, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Candidate Miranda Paez

Dear Judge Walker:

I write in support of Miranda Paez's clerkship application. I worked closely with Miranda in my Advanced Legal Writing course, where she was one of only 16 students. I have known and enjoyed working with her since her first semester of law school, when she participated in our Pre-Orientation Program. Miranda's exceptional writing and attention to detail sets her apart from other students. She readily grasps complex material and can translate that material into clear and concise written analysis. Based on my own experience as a judicial clerk, I believe that Miranda would be a valuable addition to your Chambers.

In Advanced Legal Writing, students are expected to write multiple drafts of a persuasive brief under tight time constraints. Miranda rose to the challenge. In class and in her writing, she dug into the complexities of the cases and used the facts effectively and creatively. She contributed nuanced comments and asked thoughtful questions. Her work product consistently reflected clear thinking, rigorous analysis, and careful editing; she works hard and cares deeply about getting it right. This semester she continued to hone her legal research and writing skills through a judicial externship that required independent, careful work.

Miranda's extracurricular activities also make her an ideal candidate. As an Associate Editor for the *California Law Review* and Submissions Editor for the *La Raza Law Journal*, she has demonstrated intellectual curiosity, attention to detail, and teamwork. Miranda also competed and ultimately placed third in the Regional Round of the Saul Lefkowitz Trademark Moot Court Competition. In a span of two months, she worked with her teammates to write an appellate brief and craft a persuasive oral argument. And as President of the Coalition of Minorities in Technology Law, Miranda steers the organization's programming and further its mission of fostering community among underrepresented students interested in technology law. Miranda has successfully juggled these valuable experiences with community engagement and a heavy course load.

Miranda's achievements are amplified by the fact that nothing has been handed to her and no one has given her a leg up. As a first-generation college student and the granddaughter of immigrants, Miranda came to law school without the background knowledge and network that helps many students get their footing. She quickly closed the gap and has excelled academically, demonstrating remarkable maturity and leadership.

I have spent many hours reading Miranda's writing, meeting with her individually, and working with her in class. She is a true self-starter, a sharp legal thinker, and a pleasure to work with. Her writing is top notch, her work ethic impeccable. There is no doubt in my mind that she will be an excellent clerk, as well as a kind and personable addition to Chambers.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Diana DiGennaro

Diana DiGennaro - ddigennaro@berkeley.edu - 510.642.1870

May 20, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to highly recommend Ms. Miranda Paez for a position as your law clerk. Ms. Paez was a student in my Constitutional Law class. Additionally, she was my research assistant during the Spring 2023 semester. She did an excellent job as my research assistant. I was very impressed by her research, writing, and editing skills. I also found her a pleasure to work with. Based on this experience, I think she would be an excellent law clerk.

As my research assistant, she worked on my forthcoming book about the flaws in the Constitution that threaten democracy and how they can be addressed. She did a research memo on possible ways of amending the Constitution without using the Article V process. This is an assignment that required creativity and sophisticated research skills. She did a great job. She also edited a chapter of the book, and her editing was excellent and her work on the footnotes was thorough and carefully done. Each assignment was completed on time and exceptionally well done.

Based on this work, and observing her in my class, I think that she has the skills and abilities to be an excellent law clerk. She is very smart, works exceptionally hard and effectively, and is always kind and considerate to those around her.

She has been outstanding throughout law school, serving on the California Law Review and as an editor La Raza Law Review, excelling in moot court, serving as President of the Coalition of Minorities in Technology Law, and much else.

I enthusiastically recommend her to you.

Sincerely,

Erwin Chemerinsky

Erwin Chemerinsky - echemerinsky@law.berkeley.edu - 5106426483

I, Miranda Paez, drafted the following bench memorandum during my judicial externship at the United States District Court for the Northern District of California. The research and writing are substantially my own, including revisions based on feedback provided by Chambers staff. I have received permission to use it as a writing sample. For confidentiality purposes, I have changed party names and relevant dates.

Plaintiff seeks Social Security benefits for a combination of physical and mental impairments, including spondylosis, depression, anxiety, degenerative disc disease (DDD), and attention-deficit hyperactivity disorder (ADHD). Pursuant to 42 U.S.C. § 405(g), Plaintiff filed this lawsuit for judicial review of the final decision by the Commissioner of Social Security ("Commissioner") denying her benefits claim. Before the Court are the parties' cross-motions for summary judgment. (Dkt. Nos. 13-1, 14.)[1] After careful consideration of the parties' briefing, I recommend the Court GRANT Plaintiff's motion, DENY Defendant's cross-motion, and remand for further proceedings. Because the ALJ erred in his weighing of medical evidence and Plaintiff's subjective symptom testimony, but there are outstanding issues to be resolved, remand for further proceedings is proper.

BACKGROUND

I. Procedural History

Plaintiff applied for disability and disability insurance benefits under Title II of the Social Security Act on September 27, 2019. (Administrative Record ("AR") 179-80.) Plaintiff alleged an amended disability onset date of November 25, 2017 due to DDD, spondylosis, depression, anxiety, and ADHD. (Dkt. No. 13-1 at 10; AR 15.) Her application was initially denied on February 17, 2020 and upon reconsideration on May 19, 2020. (AR 91-94, 99-103.) An Administrative Law Judge ("ALJ") held a hearing on March 26, 2021. (AR 32-70.) On May 10, 2021 the ALJ issued a decision denying Plaintiff's application for disability and disability benefits. (AR 12-31.)

A claimant is considered "disabled" under the Act if she meets two requirements. *See* 42

[1] Record Citations are to material in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of the document.

U.S.C. § 423(d); *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). First, the claimant must demonstrate "an inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). Second, the impairment or impairments must be severe enough that she is unable to do her previous work and cannot, based on her age, education, and work experience, "engage in any other kind of substantial gainful work which exists in the national economy." *Id.* § 423(d)(2)(A).

To determine whether a claimant is disabled, an ALJ is required to employ a five-step sequential analysis examining: (1) whether the claimant is engaging in "substantial gainful activity"; (2) whether the claimant has a "severe medically determinable physical or mental impairment" or combination of impairments that has lasted for more than 12 months; (3) whether the impairment "meets or equals" one of the listings in the regulations; (4) whether, given the claimant's RFC, she can still do her "past relevant work"; and (5) whether the claimant "can make an adjustment to other work." *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012), *superseded by regulation on other grounds*; *see* 20 C.F.R. § 404.1520(a).

Here, at step one, the ALJ determined Plaintiff had not engaged in substantial gainful activity since her amended alleged onset date of November 25, 2017. (AR 17.) At step two, the ALJ concluded Plaintiff had the following severe impairments: spondylosis, depression, anxiety, DDD, and ADHD. (*Id.*) At step three, the ALJ found Plaintiff's impairments, or combination of impairments, did not meet or equal any of the listed impairments in 20 C.F.R. Part 404, Subpt. P, App. 1 (the "Listings"). (*Id.*)

Further, at step three the ALJ found Plaintiff had the residual functional capacity to perform light work with the following limitations:

- be on her feet for six hours in an eight-hour day and seated for the remaining two hours;
- ability to sit down at least once per hour to be able to change positions;
- occasional pushing, pulling, climbing, balancing, stooping, or kneeling;

- no temperature extremes, excessive levels of wetness or humidity;
- no occupational hazards, unprotected heights, dangerous machinery, ropes, ladders, or scaffolds;
- limited to jobs involving no more than simple, routine, repetitive tasks that would have been performed in a low-stress work environment, defined as one involving no high-volume productivity requirements and very infrequent unexpected changes;
- and no more than occasional interaction with the public, co-workers, and supervisors.

(AR 20.) At step four, the ALJ determined Plaintiff could not perform her past relevant work. (AR 24.) At step five, however, the ALJ found there were other occupations Plaintiff could perform such as non-postal mail clerk, marker, and photocopying machine operator. (AR 24-25.) For these reasons, the ALJ concluded Plaintiff was not disabled. (AR 26-27.) The Appeals Council denied Plaintiff's request for review of the ALJ's decision on May 23, 2022, and thereby made the ALJ's decision final. (AR 1-6.) Plaintiff then sought review in this Court. (Dkt. No. 13.) In accordance with Civil Local Rule 16-5, the parties filed cross-motions for summary judgment. (Dkt. Nos. 13-1, 14.)

II. Issues for Review

1. Whether the ALJ erred in determining Plaintiff's residual functional capacity ("RFC")?

    a) Whether the ALJ erred in evaluating the medical evidence?

    b) Whether the ALJ erred in rejecting Plaintiff's subjective symptom testimony?

2. Whether the ALJ erred in relying on "incomplete and improper vocational testimony in determining that [Plaintiff] can perform alternative occupations"? (Dkt. No. 13-1 at 2.)

    a) Whether the ALJ "curbed [Plaintiff] counsel's right to cross-examine the vocational witness"? (*Id.*)

3. Whether to remand for an award of benefits or further proceedings?

DISCUSSION

I. Medical Opinion Evidence

The Ninth Circuit has applied the Commissioner's new regulatory framework for evaluating medical opinions for applications filed on or after March 27, 2017. *See Woods v.*

Kijakazi, 32 F.4th 785, 789-792 (9th Cir. 2022); *see also* 20 C.F.R. §§ 404.1520c, 416.920c (2017). The new framework eliminates a hierarchy of or deference to medical opinions, and instead uses factors to determine the persuasiveness of a medical opinion. *See Woods*, 32 F.4th at 789-792. The factors are: "(1) supportability; (2) consistency; (3) relationship with the claimant; (4) specialization; and (5) other factors, such as evidence showing a medical source has familiarity with the other evidence in the claim or an understanding of our disability program's policies and evidentiary requirements." *P.H. v. Saul*, No. 19-cv-04800-VKD, 2021 WL 965330, at *3 (N.D. Cal. Mar. 15, 2021) (cleaned up) (quoting 20 C.F.R. § 404.1520c(a), (c)(1)-(5), § 416.920c(a), (c)(1)-(5)).

The most important factors in evaluating the persuasiveness of medical opinions are supportability and consistency. *See Woods*, 32 F.4th at 791 (citing 20 C.F.R. § 404.1520c(a)). "Supportability means the extent to which a medical source supports the medical opinion by explaining the relevant objective medical evidence." *Id.* at 791-92 (cleaned up) (citing 20 C.F.R. § 404.1520c(c)(1)). "Consistency means the extent to which a medical opinion is consistent with the evidence from other medical sources and nonmedical sources in the claim." *Id.* at 792 (cleaned up) (citing 20 C.F.R. § 404.1520c(c)(2)). The third factor—"relationship with the claimant" encompasses "the length and purpose of the treatment relationship, the frequency of examinations, the kinds and extent of examinations that the medical source has performed, ... and whether the medical source has examined the claimant or merely reviewed the claimant's records." *Id.* at 792 (citing 20 C.F. R. § 404.1520c(c)(3)(i)-(v)). The ALJ must explain how he considered supportability and consistency, and may, but is not required to explain how he considered factors three, four, and five. *See id.* at 792; *see also* 20 C.F.R. § 404.1520c(b)(2).

Under the new framework, the ALJ is no longer required to "provide specific and legitimate reasons for rejecting an examining doctor's opinion." *Woods*, 32 F.4th at 787. Rather, the ALJ's decision must "simply be supported by substantial evidence." *Id.* The "ALJ cannot reject an examining or treating doctor's opinion as unsupported or inconsistent without providing an explanation supported by substantial evidence." *Id.* at 792 (cleaned up).

"The agency must articulate how persuasive it finds all of the medical opinions and explain how it considered the supportability and consistency factors in reaching these findings." *Id.* (cleaned up) (citing 20 C.F.R. §§ 404.1520c(b), 404.1520c(b)(2).

Plaintiff argues the ALJ erred in discounting the opinion of her treating psychiatrist—Dr. Allen. In January 2021, Dr. Allen opined Plaintiff "[was] not able to return to her past work or any type of work due to severe depression and anxiety." (AR 1918.) Dr. Allen noted Plaintiff's "multiple [past] traumas hinder[ed] her from working again" and that Plaintiff could not "carry out [job] tasks or interact with coworkers in a productive manner." (*Id.*) A month later, in a mental medical source statement, Dr. Allen diagnosed Plaintiff with major depressive disorder, an unspecified anxiety disorder, post-traumatic stress disorder (PTSD), and ADHD. (AR 1920.) In the same statement, Dr. Allen found Plaintiff possessed the following extreme[2] limitations:

- ability to remember locations and work-like procedures;
- ability to understand and remember detailed instructions;
- ability to carry out detailed instructions;
- ability to maintain attention and concentration for extended periods;
- ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances;
- ability to sustain an ordinary routine without special supervision;
- ability to work in coordination with or proximity to others without being unduly distracted by them;
- ability to make simple work-related decisions;
- ability to complete a normal workday/workweek without interruptions from psychologically based symptoms;
- ability to ask simple questions or request assistance;
- ability to accept instructions and to respond appropriately to criticism from supervisors;
- restriction of understanding, remembering, or applying information;
- difficulty in interacting with others;
- and deficiencies of concentration, persistence, or maintaining pace.

(AR 1921-23.) Due to Plaintiff's impairments, Dr. Allen determined Plaintiff would be absent

[2] The definition of an "extreme" limitation is the "ability to perform designated work-related mental functions, but will have limitations that impair the effective performance of the task incrementally for a total of more than 30% of the eight-hour workday of a forty-hour workweek." (AR 1921.)

from work more than four days per month. (AR 1923.)

The ALJ found Dr. Allen's opinion unpersuasive because his opinion (1) "[was] inconsistent with the claimant's medical records during the relevant period that included conservative treatment and generally normal examinations," and (2) "ha[d] minimal relevance to the relevant period." (AR 24.) I agree with Plaintiff's contention that the ALJ's rejection of Dr. Allen's medical opinion is not supported by substantial evidence.

First, the ALJ's conclusion that Dr. Allen's opinion is "inconsistent with the claimant's medical records during the relevant period that included generally normal examinations" is not supported by substantial evidence. (AR 24.) The ALJ determined Plaintiff's mental status examinations from September 2016 to March 2018 were "generally normal." (AR 22.) However, the ALJ erred by ignoring the contrary medical evidence and focusing instead on the limited evidence which supported his finding of non-disability. *See Holohan v. Massanari*, 246 F.3d 1195, 1207 (9th Cir. 2001). "An ALJ may not cherry-pick evidence to support the conclusion that a claimant is not disabled, but must consider the evidence as a whole in making a reasoned disability determination." *Williams v. Colvin*, No. ED CV 14-2146-PLA, 2015 WL 4507174, at *6 (C.D. Cal. July 23, 2015) (internal citations omitted).

Specifically, while the ALJ stated Plaintiff's September 27, 2016 mental status examination was "normal," presumably based on Plaintiff's report that she "fe[lt] overtly better" and was in a "better mood," the ALJ also acknowledged that at this same visit, Plaintiff received diagnoses of recurrent major depressive disorder and general anxiety disorder. (AR 22, 976-80.) The ALJ characterized Plaintiff's August 5, 2017 examination as "normal except for the claimant having tearful/unhappy affect, low insight and somewhat circumstantial thought process." (AR 22.) A week later, after being referred to do so, Plaintiff completed psychiatry testing "due to symptoms that may be consistent with ADHD," including "problems focusing." (AR 1080, 1083.) And, following her August 25, 2017 ADHD screening evaluation, Plaintiff's medications were increased. (AR 1077.) The ALJ noted that in an August 31, 2017 examination, Plaintiff stated "she did not experience depression," but also acknowledged that in the same examination, Plaintiff discussed having difficulty focusing and was diagnosed with

ADHD. (AR 22, 1076.) Similarly, the ALJ cited Plaintiff's "normal" September 13, 2017 mental status examination, but Plaintiff's "chief complaint" for the examination was neck pain, not her mental impairments. (*Compare* AR 22 *with* AR 1067-71.) Further, while the ALJ presumably relied on Plaintiff's reported "normal mood, behavior, motor activity, and thought processes," the examination report also indicates Plaintiff "plan[ed] to follow-up with psychiatry to discuss inattention and hyperactivity symptoms." (AR 1067-68.)

The ALJ found Plaintiff's medications were "adjusted" on November 22, 2017 "due to her complaints of having problems focusing," and, indeed, the medications were increased as a result of this visit. (AR 22, 1029-30.) The ALJ noted that the following month Plaintiff reported she "fe[lt] calmer," (AR 22), even though at her December 18, 2017 examination Plaintiff also reported having continued anxiety and poor concentration. (AR 1022.) Plaintiff's increased medications were continued through Plaintiff's February 13, 2018 examination—four days after the date last insured. (AR 1014-15.) Lastly, regarding Plaintiff's March 16, 2018 examination, less than one month after the date last insured, the ALJ found Plaintiff's "[m]ental status examination was normal except for the claimant having anxious mood and fair impulse control, insight and judgment." (AR 22.) But during that examination, Plaintiff's physician diagnosed her with ADHD, major depressive disorder, and anxiety, among other things, and recommended increasing the dosage of one of her medications when her side effects were controlled, and discontinued the one medication Plaintiff did not believe she needed. (AR 1010-12.)

The above evidence does not support the ALJ's decision to disregard Dr. Allen's opinion on the grounds it was inconsistent with the "generally normal examinations." Those examinations were not "generally normal," but instead consistently identified Plaintiff's ongoing mental health symptoms, increased medication, and continued mental health diagnoses. The ALJ also did not explain how the above history reflected "conservative" treatment. Because the ALJ relied on the evidence that supported his conclusion of Plaintiff's non-disability while ignoring medical evidence in the very same reports that

undermined his determination, the ALJ's rejection of Dr. Allen's medical opinion is not supported by substantial evidence. *See Holohan*, 246 F.3d at 1207.

Second, while the ALJ stated Dr. Allen's opinion had "minimal relevance to the relevant period" because it was made "well after the date last insured," it treated the opinion as if it had no relevance at all. (AR 22-24.) This finding is not supported by substantial evidence. In support of his decision not to give any weight to Dr. Allen's opinion, the ALJ noted that "Dr. Allen began treating the claimant in May of 2021." (AR 24.) Although Dr. Allen began treating Plaintiff and provided his medical opinion in March and April of 2021—more than three years after the date last insured— "it is well-settled that medical opinions made after the period for disability are relevant to assess the claimant's disability." *See Smith v. Bowen*, 849 F.2d 1222, 1225 (9th Cir. 1988). Further, Dr. Allen specifically identified Plaintiff's mental impairment onset date as November 19, 2017. (AR 1923.) And the ALJ's treatment of Dr. Allen's opinion was inconsistent with his treatment of Dr. Johnson's review and opinion; the ALJ made no mention of Dr. Johnson's opinion being made more than two years after the date last insured. (AR 23.); *See F.B. v. Kijakazi*, No. 21-01628-JCS, 2022 WL 4544202, at *8-9 (N.D. Cal. Sept. 28, 2022) (rejecting an ALJ supporting one retrospective medical opinion, while rejecting another retrospective medical opinion that conflicted with her findings). Indeed, "where medical opinions refer back to the same chronic condition and symptoms discussed in [earlier medical records] . . . the fact that [the most recent] opinions were issued significantly after [the claimant's date last insured] does not undercut the weight those opinions are due." *Svaldi v. Berryhill*, 720 F. App'x 342, 343-44 (9th Cir. 2017) (internal citations and quotation marks omitted). Because Dr. Allen's opinion was relevant to assess Plaintiff's disability, the ALJ needed to do more than merely point to Dr. Allen's examination occurring after the date last insured. *See Smith*, 849 F.2d at 1225-26. Medical opinions and reports are "inevitably rendered retrospectively and should not be disregarded solely on that basis." *Id.* (collecting cases finding that "medical evaluations made after the expiration of a claimant's insured status are relevant to an evaluation of the pre-expiration condition").

The Commissioner's reliance on out-of-circuit district court authority is unpersuasive. (Dkt. No. 14 at 10 (citing *Garcia v. Saul*, 509 F. Supp. 3d 1306, 1313 (D.N.M. 2020); *Ross v. Berryhill*, 385 F. Supp. 3d 767, 778 (W.D. Wisc. 2019)). In the Ninth Circuit, an ALJ cannot disregard medical opinions merely because they were rendered after the date last insured. *Smith*, 849 F.2d at 1225. The cases are also distinguishable. In *Garcia*, the post-last-day-insured opinion revealed the doctor did not purport to offer a retrospective opinion and had *not* reviewed the plaintiff's medical records. *Garcia*, 509 F. Supp. 3d at 1313. Here, Dr. Allen *did* make a retrospective opinion and the ALJ made no finding as to whether Dr. Allen reviewed the medical records. In *Ross*, the doctor had not recently treated the plaintiff. *Ross*, 385 F. Supp. 3d at 778. Here, Dr. Allen's opinion was contemporaneous with his treatment of Plaintiff.

The Commissioner's opposition also raises several other reasons why the ALJ might have rejected Dr. Allen's opinion, including the length of time he treated Plaintiff and that the record did not affirmatively show Dr. Allen reviewed Plaintiff's medical records. (Dkt. No. 14 at 10.) The ALJ, however, did not give those reasons and thus they cannot be considered by this Court. *See Bray v. Commissioner of Social Security Admin.*, 554 F.3d 1219, 1225 (9th Cir. 2009) ("[l]ong-standing principles of administrative law require us to review the ALJ's decision based on the reasoning and factual findings offered by the ALJ—not post hoc rationalizations that attempt to intuit what the adjudicator may have been thinking.").

***

In sum, the ALJ's rejection of Dr. Allen's opinion is not supported by substantial evidence. *See Woods*, 32 F.4th at 792.

II. Subjective Symptom Testimony

The Ninth Circuit has "established a two-step analysis for determining the extent to which a claimant's symptom testimony must be credited." *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). "First, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged." *Id.* "Second, if the claimant meets this first test

and there is no evidence of malingering, the ALJ can reject the claimant's testimony about the severity of her symptoms only by offering specific, clear and convincing reasons for doing so." *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (cleaned up). If the ALJ's assessment "is supported by substantial evidence in the record, [courts] may not engage in second-guessing." *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002) (cleaned up).

Applying the two-step analysis, the ALJ first determined Plaintiff's "medically determinable impairments could reasonably be expected to cause the alleged symptoms." (AR 20.) Because Plaintiff met step one of the test, the ALJ was required to provide "specific, clear and convincing reasons" for rejecting Plaintiff's testimony regarding the severity of her symptoms, or else find evidence of malingering. *See Lingenfelter*, 504 F.3d at 1036. The ALJ did not find evidence of malingering, but found that Plaintiff's "statements concerning the intensity, persistence and limiting effects of [her] symptoms not entirely consistent with the medical evidence and other evidence in the record." (AR 21.)

The ALJ's boilerplate conclusory rationale fails to satisfy the requirement that an ALJ provide "specific, clear and convincing reasons" supported by substantial evidence for rejecting Plaintiff's subjective symptom testimony. *See Trevizo*, 871 F.3d at 678 (finding the ALJ erred in using "boilerplate language" for the adverse credibility finding rather than offering "specific, clear and convincing reasons."); *see also Brown-Hunter v. Colvin*, 806 F.3d 487, 494 (9th Cir. 2015) (holding the ALJ erred in failing to "specifically identify any such inconsistencies" and instead stating "her non-credibility conclusion and then summariz[ing] the medical evidence supporting her RFC determination."). To ensure Plaintiff's subjective symptom testimony was "not arbitrarily discredited," the ALJ must "link [Plaintiff's] testimony to the particular parts of the record supporting [his] non-credibility determination." *Brown-Hunter*, 806 F.3d at 494.

The ALJ's rejection of Plaintiff's subjective symptom testimony based on what he described as a "course of medical treatment" that was "not consistent with disabling impairments," her "conservative treatment" through the date last insured, and a work history "not fully consistent with the claimant's allegations of disability," are not clear and convincing

reasons supported by substantial evidence. (AR 21-22.)

First, the ALJ does not indicate what "course of medical treatment" is inconsistent with disability impairments. To the extent the ALJ is relying on what he characterized as Plaintiff's "generally normal examinations," this rationale is not supported by substantial evidence as explained above.

Second, to the extent the ALJ relied upon Plaintiff's "conservative treatment," conservative medical treatment can only be used as a basis for discounting a claimant's testimony when the ALJ identifies the more aggressive treatment options that were available and appropriate, and considers the reasons the claimant did not pursue more aggressive treatment. *See Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007) ("[A]n adjudicator must not draw any inferences about an individual's symptoms and their functional effects from a failure to seek or pursue regular medical treatment without first considering any explanations that the individual may provide, or other information in the case record, that may explain infrequent or irregular medical visits or failure to seek medical treatment.") (internal citations and quotation marks omitted); *see also Cortes v. Colvin*, No. 2:15-CV-2277 (GJS), 2016 WL 1192638, at *4 (C.D. Cal. Mar. 28, 2016) ("[A]n ALJ errs in relying on conservative treatment if the record does not reflect that more aggressive treatment options are appropriate or available.") (internal citations and quotation marks omitted).

Third, the ALJ failed to explain how Plaintiff's work history undermines her subjective testimony. In his brief discussion of Plaintiff's work history, the ALJ found Plaintiff's earning history "unimpressive" and work history "not fully consistent with [Plaintiff's] allegations of disability." (AR 22, 194.) Importantly, the ALJ did not explain how Plaintiff's "unimpressive" earning history was relevant to his rejection of Plaintiff's mental impairment symptom testimony. The Commissioner argues Plaintiff's post-disability onset date income indicates Plaintiff was not as limited as she alleged because she was able to perform some work. (Dkt. No. 14 at 17.) The ALJ, however, did not clearly articulate this rationale. The Court cannot consider the Commissioner's post-hoc explanation of the ALJ's reasoning. *See Bray*, 554 F.3d at 1225. Instead, the ALJ concluded that because Plaintiff applied for a job as a

phlebotomist, she had a "subjective belief that she was capable of performing some work." (AR 21.) However, Plaintiff did not complete her phlebotomy degree despite multiple attempts to pass required phlebotomy courses. (AR 40, 245-51.) Additionally, the ALJ ignored Plaintiff's hearing testimony, where she stated she was unable to work due to intermittent pain, depression, and anxiety attacks. (AR 42-43.)

In sum, the ALJ's rejection of Plaintiff's subjective symptom testimony does not satisfy the "demanding" clear and convincing standard. *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014).

III. Vocational Expert Testimony

Because the ALJ's determination of Plaintiff's RFC is not supported by substantial evidence, the Court need not consider Plaintiff's additional argument regarding the ALJ's step-five analysis. Particularly, the Court need not address Plaintiff's vocal expert testimony arguments because the Court's order for further proceedings will result in new testimony.

IV. Harmless Error

Because the ALJ's consideration of the medical evidence and subjective symptom testimony is not supported by substantial evidence, the ALJ's decision cannot stand. The ALJ's errors here go to the heart of the disability determination and are not harmless. "[A] reviewing court cannot consider the error harmless unless it can confidently conclude that no reasonable ALJ, when fully crediting the testimony, could have reached a different disability determination." *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1056 (9th Cir. 2006). Had the ALJ not erred in evaluating the medical opinion evidence and rejecting Plaintiff's subjective symptom testimony, the ALJ could have reasonably come to a different conclusion regarding Plaintiff's RFC. *See id.*

V. Remand

Plaintiff asks the Court to remand the case for the payment of benefits or alternatively, for further proceedings. (Dkt. No. 13-1 at 29.) When reversing an ALJ's decision, "the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation." *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004). Remand for an award of benefits is proper, however, "where (1) the record has been fully developed and further

administrative proceedings would serve no useful purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion; and (3) if the improperly discredited evidence were credited as true, the ALJ would be required to find the claimant disabled on remand." *Revels v. Berryhill*, 874 F.3d 648, 668 (9th Cir. 2017) (internal citation and quotation marks omitted).

Here, prong one is not satisfied because the record has not been fully developed. Because the ALJ erred in discounting Dr. Allen's opinion and rejecting Plaintiff's subjective symptom testimony to determine her RFC, there are outstanding issues that must be resolved before a final determination can be made. Prong two has been satisfied because as discussed above, the ALJ gave legally insufficient reasons for discounting Dr. Allen's opinion and Plaintiff's subjective symptom testimony. The third prong is not satisfied because it is not clear from the record that the ALJ would be required to find Plaintiff disabled if medical opinions were properly evaluated and Plaintiff's symptom testimony was properly credited. For instance, to determine Plaintiff's disability status, the ALJ should reconcile conflicting medical opinions, such as Dr. Allen's and Dr. Johnson's, and other evidence in the record finding Plaintiff's impairments could be addressed through work-related limitations. Because the three elements are not met, further proceedings are warranted.

CONCLUSION

For the reasons stated above, I recommend the Court GRANT Plaintiff's motion, DENY Defendant's cross-motion, and REMAND for further proceedings. Further, I recommend denying Plaintiff's request for remand to a different ALJ because Plaintiff has not provided "evidence of bias, substantial delay, or other reason for disqualification." *See M.P. v. Kijakazi*, No. 21-CV-03632-SVK, 2022 WL 1288986, at *9 (N.D. Cal. Apr. 29, 2022); *see also Rollins v. Massanari*, 261 F.3d 853, 857-58 (9th Cir. 2001) (noting that "ALJs and other similar quasi-judicial administrative officers are presumed to be unbiased" and "this presumption can be rebutted by a showing of conflict of interest or some other specific reason for disqualification."). Plaintiff has

not shown that the ALJ's behavior, in the context of the entire case, was "so extreme as to display clear inability to render fair judgment." *Rollins*, 261 F.3d at 858 (citing *Liteky v. United States*, 510 U.S. 540, 551 (1994)).

Applicant Details

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Class Rank	**50%**
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June 6, 2023

The Honorable Jamar Walker
United States District Court
for the Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year law student at the University of North Carolina School of Law seeking a clerkship to begin in 2024. Enclosed are my resume, writing sample, letters of recommendation, and law school transcript.

I am particularly interested as a serving as a clerk in your chambers because of my commitment to using my legal education to continue my service to my local community. This commitment is inspired by my experience as a leader in a local student-run nonprofit serving UNC Children's. In your chambers, I believe I can continue to embody that spirit of service to my community. This is especially true because I am currently serving the Albemarle County community through my summer internship, and my family also lives in Virginia.

My internship experience has also solidified my interest in serving as a clerk by giving me the opportunity to spend extensive time in the courtroom. Seeing the impact of the judicial system on the lives of community members has given me a greater appreciation for the work that goes on in chambers and in the courtroom and will inform my work as a clerk.

I believe that my strong legal research and writing skills will be an asset to your chambers. I am currently serving as an Articles Editor for the *North Carolina Law Review*, and my student comment is forthcoming in Volume 102. Writing this piece required extensive statutory interpretation, in-depth analysis of developing case law, and synthesizing complex legal scholarship. I am excited to continue to refine my writing and develop these skills as I co-author a law review article with Professor Carissa Hessick later this year. I have also served in two research assistant positions, both of which gave me the opportunity to adapt my skills to new types of legal and non-legal research.

Thank you for your time and consideration, and I look forward to hearing from your chambers about this position soon.

Sincerely,

/s/ Meighan R. Parsh

Enclosures

MEIGHAN R. PARSH

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- Student Bar Association Health and Wellness Committee, Member
- Performed 19 hours of pro bono service

University of North Carolina at Chapel Hill, Chapel Hill, North Carolina
Bachelor of Arts, Political Science and Communication Studies, May 2021
GPA: 3.89; Dean's List; Graduated with Highest Distinction
Honors:

- Phi Beta Kappa, national academic honorary society
- Pi Sigma Alpha, national Political Science honor society
- Lambda Pi Eta, national Communication Studies honor society

PUBLICATION

- *Dueling Discretion: The Imperfect Mechanisms for Removing Elected Prosecutors*, 102 N.C. L. REV. (forthcoming Jan. 2024)

EXPERIENCE

Fair and Just Prosecution, Charlottesville, Virginia
Summer Fellow, May–July 2023

- Serve as an intern for the Albemarle County Commonwealth's Attorney's Office
- Write a policy reform project to contribute to criminal justice reform efforts in the office

Prosecutors and Politics Project, University of North Carolina School of Law, Chapel Hill, North Carolina
Research Assistant, May 2022–Present

- Collect local prosecutor election results and campaign contribution data from multiple states
- Research and code enforcement policy positions of local prosecutor candidates
- Research and code media coverage of local prosecutor candidates

Professor Maxine Eichner, University of North Carolina School of Law, Chapel Hill, North Carolina
Summer Research Assistant, May–August 2022

- Researched and compiled case studies in medical literature
- Prepared and proofread state statutory framework documents
- Conducted research on child welfare policy issues and drafted a memorandum on the findings

Carolina For The Kids Foundation, Chapel Hill, North Carolina
Executive Director, April 2020–April 2021

- Led all organizational operations, resulting in over $260,000 donated to UNC Children's and the Ronald McDonald House of Chapel Hill

INTERESTS

Experimenting with comfort food recipes, watching women's soccer, running

UNC SCHOOL OF LAW

THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL
SCHOOL OF LAW

O 919-962-5106 | F 919-962-1170

Van Hecke-Wettach Hall | Campus Box 3380
160 Ridge Road | Chapel Hill, NC 27599-3380
law.unc.edu

Unofficial Transcript

Note to Employers from the Career Development Office: Grades at the UNC School of Law are awarded in the form of letters (A, A-, B+, B-, C, etc.). Each letter grade is associated with a number (A = 4.0, A- = 3.7, B+ = 3.3, B = 3.0, etc.) for purposes of calculating a cumulative GPA. An A+ may be awarded in exceptional situations. For more information on the grading system, including the current class rank cutoffs, please contact the Career Development Office at (919) 962-8102 or visit our website at https://law.unc.edu/careers/for-employers/grading-policy-faq/

Student Name: Meighan R. Parsh

Cumulative GPA: 3.541

Course	Description	Term	Grade	Units
LAW 209	TORTS	2021 Fall	B+	4.00
LAW 199	TRANSITION TO THE PROFESSION	2021 Fall	PS	0.50
LAW 204	CONTRACTS	2021 Fall	B	4.00
LAW 201	CIVIL PROCEDURE	2021 Fall	B+	4.00
LAW 295	RES,REAS,WRIT,ADVOC I	2021 Fall	A-	3.00
LAW 205	CRIMINAL LAW	2022 Spring	B+	4.00
LAW 199	TRANSITION TO THE PROFESSION	2022 Spring	PS	0.50
LAW 207	PROPERTY	2022 Spring	B+	4.00
LAW 296	RES,REAS,WRIT,ADVOC II	2022 Spring	B+	3.00
LAW 234A	CONSTITUTIONAL LAW	2022 Spring	A-	4.00
LAW 206	CRIM PRO INVESTIGATION	2022 Fall	B+	3.00
LAW 266F	PROF RESPONSIBILITY	2022 Fall	B+	3.00
LAW 252	INTERNATIONAL LAW	2022 Fall	A	3.00
LAW 275	SECURED TRANSACTIONS	2022 Fall	A-	3.00
LAW 242	EVIDENCE	2023 Spring	A	4.00
LAW 228	BUSI ASSOCIATIONS	2023 Spring	A-	4.00
LAW 561	PROSECUTORS & CRIM JUSTICE SYS	2023 Spring	A	3.00
LAW 464	CRITICAL LEGAL THOUGHT	2023 Spring	A	3.00

GPA Calculation		
Total Grade Points	54.800	198.300
/ Units Taken Toward GPA	14.000	56.000
= GPA	**3.914**	**3.541**

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing on behalf of Meighan Parsh and am highly recommending her for the clerkship position in your chambers. I worked with Meighan as one of her first-year Legal Research, Reasoning, Writing, and Advocacy (RRWA) professors. I know her to be bright, hardworking, and eager for a chance to demonstrate her intellect and passion for the law. As noted below, Meighan would be an asset to your chambers for multiple reasons.

First, Meighan is a quick study and a natural critical thinker. Meighan immediately stood out in my class as a legal mind. Her written submissions were thoughtful, thorough, and strategic. In class, we merely polished her existing skill. She worked hard to master structure, clarity, and depth in her writing. She worked independently and demonstrated initiative. At the same time, she welcomed feedback, and she always incorporated my instruction when necessary.

I really got to witness Meighan's independent work product, however, when she wrote her law review comment. Without being required to, Meighan asked me to read multiple drafts of her comment. With each draft, her writing got stronger. She was determined to submit a piece that was worthy of publishing, and she did just that. I am confident that Meighan would bring the same level of determination and skill to your chambers.

Second, Meighan is generous with her talent and spirit. In RRWA, the students learn in groups through various interactive exercises and activities. Proficiency levels can vary, so a student's interpersonal skills are often tested just as frequently as their analytical skills. Meighan stood out in a group setting as an honest yet empathetic peer. She provided thorough yet fair feedback and never judged others or isolated herself. She was kind, and as her professor, I really appreciated that.

Meighan's generous spirit is further evidenced by her legal interest in criminal justice. Meighan's submission materials demonstrate that her pursuit for justice started early in life and that she will work diligently to learn what is needed to be a successful advocate. Overall, I am confident that Meighan would not take this opportunity for granted.

If you have any further questions, you can reach me at scardull@email.unc.edu or 985-320-7797. Thank you for your time.

Sincerely,

Annie Scardulla

June 06, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of Meighan Parsh's application for a clerkship in your chambers. Ms. Parsh has impressed me with her excellent writing skills, her intelligence, her professionalism, and her amazing work ethic. I believe that she will be an excellent law clerk, and I give her my highest recommendation.

Ms. Parsh has taken three classes with me here at the University of North Carolina: my first-year criminal law class, the upper-level criminal procedure class that I teach, and a seminar on prosecutors. Ms. Parsh was deeply engaged in all three classes. For the two podium classes, criminal law and criminal procedure, she often came to office hours with questions she had prepared based on the material we had covered in class, and she was quick to raise some of the thorny problems posed by the reading and the class discussions. Although she may not have received the highest grade in those classes, I have no doubt that she completely mastered the material.

Ms. Parsh has not only been a student of mine, she has also been a trusted research assistant. She has worked with me for multiple semesters on a large project about prosecutors and their role in society—a project that employs multiple student research assistants. Ms. Parsh stands out from that group of students: Her work is meticulous, and she always completes her assignments quickly. Her professionalism skills are also impressive. On her own initiative, she sends me weekly updates on her work, in which she clearly outlines what she has done and carefully estimates how much work she has left to do. All of her work has been excellent. As a consequence, I have often given her assignments that I would not trust other students to complete.

In addition to her classroom performance and research skills, I have been able to observe Ms. Parsh's writing skills. In particular, I have had the opportunity to work with Ms. Parsh on two major writing projects. First, I served as an informal advisor for Ms. Parsh's student note for the North Carolina Law Review. Her work on the note has been impressive. She performed copious amounts of research and synthesized large amounts of material on state law and practices surrounding the removal of local prosecutors. Her note revealed significant information that I did not previously know because it is not part of the academic literature in the area. I have subsequently relied on that work in media calls that I have fielded about state efforts to limit the power of local prosecutors.

Ms. Parsh's work on her student note demonstrated not only great research and synthesis skills, but also excellent writing skills. She was able to convey nuanced legal differences in simple and straightforward language while not sacrificing any of the complexity. Ms. Parsh also demonstrated that she possesses perhaps the most important skill for a successful legal writer—the ability to internalize constructive feedback and significantly improve a piece of writing through extensive revisions.

Ms. Parsh's writing skills far surpass the skills of a typical law student, a fact that was driven home this semester. As a student in my seminar, Ms. Parsh has been writing a substantial research paper. Like all of the seminar students, Ms. Parsh has submitted drafts of various sections of her paper during the course of the semester and received written feedback from me on those drafts. Reading her work alongside the work of her peers has highlighted for me how impressive Ms. Parsh's writing skills are. Her work is closer to the drafts that I read from my junior colleagues than the drafts I read from her fellow students.

To drive home exactly how impressed I am by Ms. Parsh's student note and seminar paper, I will share with you that I recently asked Ms. Parsh to co-author a law review article with me. The article will draw on some themes that she has developed in her two writing projects, as well as several conversations that we have had on similar topics. This is only the second time in my law teaching career that I have invited a student to write an article with me. And I have no doubt that Ms. Parsh will be an excellent co-author.

Ms. Parsh is so impressive because she is not only intelligent, but also because she has an incredible work ethic. For example, every day, I arrive at the law school early in the morning, usually long before any classes are scheduled to start. As I walk through the building, I walk past several tables in our law school's rotunda. Each and every morning, Ms. Parsh is seated at one of those tables, hard at work. Ms. Parsh doesn't simply work hard; she is thoughtful about how she approaches tasks and challenges. Whenever she has been dissatisfied with her performance in a class or on an assignment, Ms. Parsh has been quick to assess what she could have done differently. She then invariably puts in more time, working not only harder, but also smarter, in order to master whatever task she is facing.

The time that I have spent with Ms. Parsh—as her professor, her supervisor, and her advisor—has convinced me that she will be an excellent law clerk. It has been a real joy to work with someone who takes her legal education so seriously. And so, I hope that you give Ms. Parsh's application the serious attention that it deserves. She would make an excellent addition to your chambers.

Please let me know if you have any questions or would like any additional information about Ms. Parsh. I can be reached via email at chessick@email.unc.edu or by telephone at 919-962-4129.

Sincerely,

Hessick Carissa - chessick@unc.email.edu

Carissa Byrne Hessick
Ransdell Distinguished Professor of Law

Hessick Carissa - chessick@unc.email.edu

June 06, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Meighan Parsh, a second-year law student at the University of North Carolina School of Law, where I am a professor, for a clerkship in your chambers beginning in the fall of 2024. Meighan was a research assistant for me last summer, and was a student in my seminar, Critical Legal Theory/Critical Lawyering, this past semester. Through both of these, I have come to know her well. I recommend her highly as a law clerk.

I first came to know Meighan when I hired her as my research assistant last summer. I learned while checking her references that she was a "finisher"—someone who unfailingly completed the tasks she was given completely and precisely. That turned out to be true. Meighan was an extremely diligent and organized researcher, who thoroughly and intelligently reviewed hundreds of medical articles that I asked her to sort through for a project I was working on. She was dedicated, responsive to criticism, and organized throughout. In class, I have found the same thing to be true: She is a diligent, dedicated, and low-maintenance student. She is generally quiet in class, but when she does speak, her answers are uniformly thoughtful. Although students have not yet turned in their final papers, I was unsurprised that, when I read the rough drafts that they turned in, Meighan's was by the far the most complete, the only paper in the class that was already well bluebooked, and that it was well organized, clearly written, and well thought out.

Outside of class, Meighan comes across as a very nice, hard-working student with deep convictions about the need for justice in the world. After law school and a clerkship, she wants to pursue a career in criminal law. I have no doubt that she will further the cause of justice in whatever role she eventually chooses in the criminal justice system. A clerkship in your chambers would help advance her on this path.

In short, I think Meighan would make an excellent law clerk and will someday make an excellent lawyer. I recommend her highly and am happy to answer any more questions you may have about her.

Sincerely,

Maxine Eichner
Graham Kenan Distinguished Professor of Law
UNC School of Law

Maxine Eichner - meichner@email.unc.edu - 919.843.5670

WRITING SAMPLE FOR MEIGHAN R. PARSH

1300 Fordham Boulevard, Apt. 445, Chapel Hill, NC 27514 • 615.962.0727 • meighanp@live.unc.edu

I prepared this motion memo for my Research, Reasoning, Writing, and Advocacy class in the Spring 2022 semester. This was an open universe assignment, and I was assigned to represent the United States (defendant) in this brief. This is the final draft and was written after receiving feedback from my professor on an earlier draft.